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THE AMERICAN GOVERNOR  
FROM FIGUREHEAD TO LEADER

# THE AMERICAN GOVERNOR FROM FIGUREHEAD TO LEADER

\*

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WITH AN INTRODUCTION

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LESLIE LIPSON

LONDON, ENGLAND  
September 1938

## INTRODUCTION

**I**F A PEOPLE can solve the problem of the right relation between the legislative and executive branches of their government, they have gone far toward the firm establishment of popular rule. This accord, this working relationship, this salutary balance—call it any of these—is one of the truly great and continuing problems of statecraft. It belongs in the same high category with such questions as what justice is and how it may be secured; what the state may do to assist the cultivation of those conditions which encourage the good life; how the independence of the judiciary can be guaranteed without its exerting an overweening power; and how the public can know that the government is doing all that is required by need and long-range public interest but not more than it is good that it should do and is capable of administering.

From the earliest times political philosophers have been aware of the importance of a proper legislative-executive balance. This question, and the closely related one of citizen participation, was perhaps the chief institutional problem of the Greek city-state. Even if it be assumed that that polity is best in which citizens are elected by lot, as was done in Athens for a considerable period of time, there still remains the problem of giving the military and civil officials such a degree of autonomy as is necessary for successful action and yet is consonant with continuing popular participation, effective criticism, and assured public control.

One of the outstanding emphases in Aristotle's *Politics* is upon the dangers of mass participation and diffused responsibility, leading in turn to breakdowns and excesses, the two extremes of democracy which conduce a dictatorial rule.

The question of the proper relationship between policy formation and administrative execution appears as an unbroken

thread in the writings of political philosophers from Plato and Aristotle to the modern instrumentalists.

There is a great difference, however, as between the Aristotelian and the modern periods, on the one hand, and the middle period, on the other. During the centuries in which the papacy held firm sway political analysis naturally neglected the dual questions of citizen participation and the institutional relationships of popular rule and dealt almost exclusively with ends and morality. With the Protestant revolution, however, the philosophical basis of interest tended to shift from the afterlife to the securing of a better life on this earth. Then, and only then, did the minds of vigorous thinkers again begin to concentrate upon the institutional implications and ramifications of civil government.

The state progressively displaced the church as the center, in mundane affairs, of men's hopes and interests. With the revival of scientific method, the thinkers of the Reformation quite naturally assumed that common ends could be secured only by the successful operation of common means.

The recrudescence of this instrumentalist, institutional approach appears in the writings of Bacon, Hobbes, Locke, and Montesquieu, faintly and falteringly at first but with increasing emphasis and practicality as sovereign states encountered new difficulties.

By the time of Jeremy Bentham and John Stuart Mill, the institutional emphasis was rapidly accelerating. Analysis was preferred over dogma; observation was held in higher regard than belief. Citizen participation, the primacy of the legislature, and the rule of law—these were three large foundation stones brought into place by the revolt against divine right, spiritual and temporal, and supported by scientific method.

The nineteenth century was an optimistic era. Men had confidence in human nature and in social reform; they felt sure that legislation, emanating from a popular assembly, could be relied upon to solve society's existing social ills; they believed that men at the ballot box and in citizen assemblies were sooner

to be trusted than a person or clique whose only claim to authority was birth or power.

Men placed their faith in legislatures, tended to distrust and curb their executives. Was democracy headed toward the excesses and breakdowns which Aristotle foresaw as its inherent dangers?

Some erstwhile democracies have already crashed, and on the ground where they stood has arisen authoritarian rule, symbolized by the all-powerful leader. If the remaining democracies are to survive, they must prove more successful than they have generally been in combining the efficiency of sound relationships and functioning with the processes of popular participation and control, the *sine qua non*.

The problem is obviously one of institutional relationship and balance, but it is also caught up in the complex of social and citizen lethargy. The habit of popular assemblies to put off to the last moment, and then frequently to fail to act upon, measures which would improve the government's efficiency and effectiveness is the element which may, like an inert object resting upon a weighing scales, turn the balance against democratic control.

Mr. Lipson deals with an important body of thought and experience which grows out of citizen efforts to correct and adapt their institutional methods as the need therefor becomes clear. Almost since the turn of the century, and especially since the World War, the citizens of several American states—popular and wealthy ones among them—have attempted to solve concretely the problem we have focused attention upon—namely, how can a people secure greater efficiency and more accomplishments by an enhancement of executive authority, and at the same time safeguard popular participation and control through the instrumentality of the legislature? Are individual and collective interest, efficiency and liberty, the executive and the legislature, diametrically opposed to each other, or, with greater understanding and patience, can they be successfully reconciled?

It goes without saying that the means, the institutional organization and techniques, should not be emphasized to such an extent that the ends of civil government fail to be held in the forefront of people's attention. We moderns stand in danger of doing that very thing. An authoritarian society is temporarily satisfying because its ends are clear cut (or at least the leader must make the people think they are); they are immediate; and they are pursued with the whole person and passion of the citizen mass. A people which has early won democracy, on the other hand, faces the inherent threat of losing sight of its fixed goals, so complacent does it tend to become and so difficult and absorbing are the practical problems of governance.

Democracy is an adult form of government. It requires soberness and consistency of action. Like the adult, however, democracy tends to view life with lessening vigor and a disillusioned acceptance of lower goals. How, then, is it to prick its complacency and renew its determination, unless the stimuli and goals of earlier life be firmly fixed in consciousness? Democracy's political philosophers have not done as much as is required to fill this need.

I have attempted to emphasize the necessity of keeping the goals of democracy in constant view and of guarding against a tendency to blur the sight, due to overemphasis upon institutional detail. In doing so, however, I run the danger of distracting the reader's attention from a point I am even more intent upon stressing.

Any civilization which fails to pay equal attention to ends and means stands in great peril.

A person is not moral simply because he "holds the thought"; his acts must conform to his pretensions. A nation is not to be judged solely by the preamble of its constitution; the final verdict depends upon what the people do under its aegis. Likewise, an expert may be a master of technique but an utter fool in matters of judgment. A nation may consist of

marvelous scientists and businessmen but ride the relentless road to destruction because it lacks thinkers and seers.

At no time in history have the universities given anywhere near the relative attention to civil government that they have in the last fifty years. And what of the product? It is unexcelled as careful description and also for its practical concern. Compared with the great treatises of former periods, it is superior in its treatment of means, of institutional organization and procedure. It is definitely inferior, however, in the elucidation of ends, in its philosophical sophistication.

On the assumption that scholarship is inevitably influenced by the environment of a given culture, this institutional emphasis in a democracy is to be expected. A democracy operates on the basis of widespread plans and agreements; monarchy and aristocracy, on the contrary, reflect the inarticulate wishes of a few. Democracy operates through law and is deliberate; minority governments are bound by fewer rules and may act capriciously. Democracies are slow to change their institutional organizations and relationships; the rule of the élite may make alterations with much greater dispatch. In short, the requirement of universal understanding and participation and the greater complexity of the machinery of assent and enforcement *encourage the student of government in a democracy to focus most of his attention upon means rather than ends.*

The observational-analytical approach, concentrating upon the political process, is justified on the score of public policy and necessity. It cannot be defended, however, if preoccupation with method results in neglect of articulate ends.

*The considerations which apply to the individual operate equally in the case of the nation. Fail to balance ends and means, and disaster is inevitable. Neglect the ends of political society, and they will be supplanted by objectives of a lower order. Remain unschooled in the practical affairs of state, and goals will never come nearer than the wishful stage.*

He who would master the basic truths of government and

present a philosophical interpretation which will stand the test of experience and time must deal with both ends and means, fusing the two elements into a single unity. It would seem the part of ordinary common sense to reformulate social objectives in the light of experience with the means which must be employed. The understanding man says, "I shall have to re-define my objective on the basis of what I have discovered about the innate character of the means which are at my disposal." There is no such thing as an end apart from the means of securing it; by very definition an end is something which has to be reached by a path; and, if you do not have the path, you do not have the end.

Does what we have been saying bear directly upon the problem under consideration? It is believed that it does. Let us trace through, for example, the steps in a development familiar to American readers.

A people says that it wants its government to encroach upon citizen liberties as little as possible. Although it is stated negatively, this proposition is identifiable as a statement about an end. As a corollary, the people of the same country decide that there is less danger of concentration and abuse of power if it is diffused by placing it in the representative assembly and withholding it from the chief executive. This proposition sounds axiomatic, does it not? It may be noted, incidentally, that it is an excellent example of the intermixture of ends and means in a single proposition.

At this point experience becomes the people's instructor. They observe that the legislature seems to be disqualified, by its very constitution and nature, for the task of governing. It can propose; it can discuss; it can decide. But it cannot, itself, administer. As this truth dawns in men's minds, they feel somewhat disappointed about it, but they are not inclined to be particularly perturbed.

Over a period of several generations the population becomes predominantly urban, in contrast to the simple agrarianism of an earlier day. Only a small percentage of the population owns



businesses of any kind; the vast majority are employees. Great, impersonal corporations straddle the country, wielding a power which at times seems greater than the people's, as expressed through the instrument of government. Now the people are restive, not about political government but about corporate government. They turn to the state, which they once feared but now increasingly look upon as an ally. "Control business," they cry; "give us steady employment; break up the trusts; clean up the slums; get us out of debt; provide for our old age."

Meantime, those citizens who have been looking on through intelligent eyes now realize that the institutional procedures really are in need of adjustment. Means which are geared to one objective can hardly be expected to serve an entirely different one. The average man sees this instantly in the field of engineering; he is usually not so rational about government.

Our intelligent-eyed citizens say, "You must do one of two things: either devise better methods than have so far been developed, in order to make the legislature a better governing and administering agent, or give the chief executive more authority and more adequate means of carrying out all the programs which the people have demanded and the assembly has voted."

Can you readjust the means, putting more weight here and less there, and still preserve the integrity of the original end, which was, you will remember, freedom from undue restraint to be secured by diffusing authority? Or, in the light of all that has transpired since the government's infancy, do we need to reformulate a basic proposition of the governmental system? It would proceed somewhat as follows: "The safety and welfare of the people are better secured when power equal to need is intrusted to those who seek fulfilment of democratic programs; no power should be delegated, however, save as its recipient is precisely designated and held accountable to the full extent of his responsibility; and in order to make sure that

those who wield power do not abuse their trust, we, the people, shall see to it that legislatures be overhauled in order that they may be more effective instruments of supervision and control over the administration."

These are some of the fundamental problems of ends and means, and their coalescence, which Leslie Lipson deals with in a lucid and understanding manner.

Before closing, I should like to make a brief summary of my own thinking on the legislative-executive rapport. In the first place, I take it for granted that no state is truly democratic unless its government revolves about the legislature. I also recognize as a necessary principle of popular government the proposition that the people should be able to alter their political institutions and processes in any way which may be required in order that their legally enacted programs may be carried out successfully. These two principles sometimes appear to be incompatible. Are they? Are there no universal laws of institutional dynamics which point the way out of the seeming difficulty? I think there are. By its nature and constitution the legislature should confine itself to two major functions: the consideration of major policy, resulting in lawmaking, and the control of financial expenditure and administrative execution, taking the form of oversight, censure, and sanction. There is a middle portion which completes the process. This phase has to do with the actual carrying-out of the laws by the various and sundry administrative agencies. This work the legislature cannot do, though it soon seems to forget its lesson and try again.

The propositions I have just advanced are doubtless as old as Socrates. But to more recent theorists are we indebted for the fullest and most convincing expositions. John Stuart Mill deserves first rank, and he was followed by Walter Bagehot, Frank J. Goodnow, James Bryce, and Woodrow Wilson, if a short list may be made to suffice. I quite agree with Dr. Lipson that James Bryce has never been excelled in his ability as subtle analyst of complex political institutions and processes.

## INTRODUCTION

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Not especially philosophical, his sound judgment and common-sense advice could scarcely be improved upon as we face today's complexities.

It is a great tradition and a difficult quest which beckon the author of this book. May this be merely the first of many productive ventures!

MARSHALL E. DIMOCK

CHICAGO  
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## CHAPTER I

### THE CHIEF EXECUTIVE IN MODERN DEMOCRACIES

**T**HE democratic form of government will endure only if it serves its citizens better than alternative forms.

Like all else in this bewildered age, democracy must justify the faith of its believers by good works. But, in order to render service, democracy must possess powers and structures which equip it for action. Herein lies the test. Will democratic principles permit the state to be accoutered with the requisite authority? The query applies with especial pertinence to the doctrines of Lockian origin which have so influenced thought and practice in the United States. Democracy was born in a revolution against autocratic monarchy, and men who had suffered from abuse of power feared to grant authority even to a government of their own creation. Power as such was a danger. Government, it was held, must be responsible to the people. But how could the people enforce their control? The answer was simple: make the government weak. The problem of responsibility was easily soluble if the government had no teeth.

At a time when the individual could perhaps satisfy his most urgent wants on his own initiative such a theory might carry conviction; and those who prospered from the new-found freedom could temporarily ignore the multitude who suffered deprivation in the very heyday of *laissez faire*. The theory, however, is manifestly unsuited to an era when the economic system is under strain or in collapse. The economic individualism which once ran riot has run to seed. No "hidden hand," no "natural laws," have beneficently harmonized the competition of profit-seeking millions. Harassed by the insecurities of modernity the individual stands in greater need than ever before of the services of government.

Can the democratic state tolerate a strong government? If it cannot, will democracy survive? The recrudescence of autocracy shows the issue to be urgent. It would be folly to close one's eyes to risks that are present everywhere. If democracy does not supply its citizens with the essentials for living, it will be abandoned. Hysteria can produce fascism in any country. The risk is still further heightened because democracy is caught in a dilemma. A government which is too weak can lead to dictatorship as surely and certainly as one that is too strong.<sup>1</sup> When the state is too feeble to render service, the people will be inveigled by a dictator's blandishments; should it be strengthened to excess, those in power may become uncontrollable. In either case, there is soil for the weed of dictatorship to take root. The crucial difficulty confronting the democrat is to increase the state's power to serve while tightening his own means of control. How can he find an institutional framework in which the difficulty will be resolved? What form of organization will enable the state to exercise its powers efficiently yet subject to the popular will? A characteristic feature of dictatorship, and one which differentiates it from the institutions of democracy, is the entire absence of any check on the executive arm of the state. The dynamism of the autocrat must be liberated from any hampering restrictions which legislatures or courts may impose. The wave of executive aggrandizement, though it has risen to extreme heights in countries which have submitted to dictatorship, has not been confined to them alone. In America, in Britain, and in France, the trend of the last fifty years has steadily expanded the scope of governmental activities. The heritage of *laissez faire*, the life-or-death necessities of the war, the ravages of the depression, have imperatively placed upon government the need for remedial action. Since action must be taken, it is clearly the "doing" branch, the executive, on whom falls the greatest burden. Equally clearly,

<sup>1</sup> Plato saw this. In his account of the "degenerate states" he makes the tyrant follow immediately on a weak form of democracy (*Republic* viii. 563E-564A).



if action be the prime requisite, a dictatorial government possesses the advantage of efficiency, albeit untrammelled by constitutional scruples. How can democracy in the twentieth century secure the like advantage, and how can it avoid the pitfalls?

To the first part of the question leadership must supply the answer. It is erroneous to suppose that this factor can be dispensed with under a democracy. Leadership is not merely compatible with democracy; it is essential to its successful functioning and continued existence. Alike in both phases of the governmental process, in lawmaking and in administration, modern democracies exhibit the desirability of leadership. Policies must first be initiated, then guided to enactment through the legislative assembly; the myriad activities of administration must be supervised and co-ordinated. In each phase the emotions, wills, and philosophies of men must be attuned in harmony; in each the leaders must call the tune.

Yet, even though unqualified assent be accorded thus far, ample ground for disagreement remains. By what branch of the government should leadership be furnished? Is it to be found better in a group of men, such as a legislature, or in a single individual, such as a chief executive? If in the former, is there any need for a chief executive? If in the latter, what purpose will the legislature serve? Glancing at the political development of the Western democracies, one observes a significant evolution. All three countries have concentrated in the hands of a single officer the leadership in both legislation and administration. The British prime minister to all practical purposes has become the legate of the authority vested in the crown. Neither in Westminster nor in Whitehall exists a rival of equal power. The French prime minister, though more at the mercy of parliamentary blocs than his British compeer, bears nevertheless the ultimate responsibility for sponsoring laws and for their administration. In the federal government of America many presidents have exercised as much influence in Congress as in the branch of government accorded to them by constitu-

tional theory; whilst in the forty-eight states the governor, outgrowing the weakness of his infancy, has developed leadership in both fields. The consistency of the phenomenon merits attention. Why is it that in all the principal democratic nations the leadership in both governmental processes should have centered on the same individual? How does the chief executive of the modern democratic state reconcile this duality of his functions?

The present study attempts to examine the answer to these questions in the American state governments. The central theme throughout is the leadership of the governor in the executive and legislative branches. Four states have been selected for special emphasis. The government of New York is on a larger scale than that of any other in the Union. It approaches nearest to a national government in size and complexity. Massachusetts was chosen to represent the political habits and traditions of New England. Highly industrialized, small in area, and densely populated, this state was called upon to rectify defects of organization at an earlier date than most others. Virginia illustrates the southern region, where the political dominance of one party simplifies some of the administrative problems. Illinois in the Middle West exemplifies the difficulty of establishing honest administration in a milieu of spoils politics. To other states—Kansas, Wisconsin, Montana, New Mexico, California, Oregon, and Washington—allusions have been included whenever their experiences were germane to the discussion.

It may be objected that the state governments are not a good context in which to consider the problems raised in this study. These are fragmentary governments. Existing within a federal structure, the states are subordinate in importance to the nation and lack certain of the functions which pertain to the nation-state. Many have small areas or populations, and their organization corresponds in size. The governments at Albany, Richmond, or Springfield cannot be compared with those at Washington, Paris, or London. It is true that this

difference of scale should be taken into account. The mere size of national governments gives them a complexity of peculiar nature. Conducting foreign relations, for instance, is a task which affects the character of their organization. But it should not be supposed that the powers of the states are negligible. The Tenth Amendment to the federal Constitution assures them a position in the Union quite different, for example, from that of the provinces in the Dominion of Canada. Since the states, and not the national government, possess the residual powers, on them have devolved many of the newer governmental functions. Chief among their activities are the care of public health, construction of roads, provision of education, regulating of public utilities, and supervision of labor conditions. The organization of governments which perform duties so vital to the general welfare cannot fail to be of interest to political scientists. Even the smaller scale of their operations does not prevent them from offering useful lessons. Problems may stand forth in clearer outline when the organization is less intricate. Causal relationships may be more readily inferred, and the solutions more easily prescribed. The political philosophy of Plato and Aristotle and the history of the city-state are of value to the modern world, even though their scope was more restricted.

With individual variations, the state governments follow the same pattern as the federal. They present a fertile field for comparative political science. Bryce dubbed them "laboratories for political experimentation." Uneven in their standards of statecraft and dissimilar in their local traditions, they exhibit instructive contrasts with one another, with their own federal government, and with democracies elsewhere. In view of these opportunities it occasions surprise that they have been so relatively neglected. The federal government has always attracted the bulk of attention because it is more spectacular. The cities, too, fell under scrutiny because their corruption was so glaring. Their ills were diagnosed, and their pathological condition has been considerably alleviated. The states for

their part were submitted to the microscope in the decade and a half which commenced in 1913, and an extensive literature exposed their defects. But just at the very time when enough changes had been effected to warrant appraisal the nationwide emergency of the depression again centered interest on the federal leviathan. While knowledge of what transpires at Washington is daily spread from coast to coast, the state governments receive far less notice than is their due. In traveling through the country, the writer has frequently observed the comparative ignorance in one state of events in another. Even state officials might know little of how problems kindred to their own were being solved in a neighboring jurisdiction.

For the questions raised in this book the American states, so far from being of negligible concern, possess special significance. The issues came to the forefront with great clarity. Attaining their statehood by a war of independence, the American colonists were imbued with mistrust of authority, and the governors of their creation were almost as powerless to serve the people as to frustrate their will. A striking contrast is the governor in many states today. The powers that now pertain to his office, should he exercise them with vigor, grant him a paramount position in legislation and administration. The metamorphosis is all the more remarkable because it ran counter to the time-honored theory of the separation of powers. In this doctrine, when subjected to analysis, two ideas can be detected: one, that all functions of government are, as a matter of fact, divisible into three principal branches; the other, that each of these branches ought as a matter of safety to be intrusted to three independent groups of officials. It is doubtful whether anyone ever held this theory in the extreme form which logical consistency would demand, and it is quite certain that no one ever tried to apply it in such form. Certainly, the framers of the federal and the early state constitutions permitted many modifications. Although lip service was paid to the doctrine, the constitutions did not fully exemplify the constitutional theory which they purported to embody.

The Massachusetts constitution of 1780, for instance, announced explicitly:

The legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.<sup>2</sup>

But this principle could hardly be reconciled with the near-by provision: "No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the Governor for his revisal"<sup>3</sup>—which nullifies any separation. At a later stage the doctrine was enunciated with such qualifications as to render it virtually meaningless. Thus, in the 1879 constitution of California appears:

The powers of the government of the State of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the exercise of powers *properly* belonging to one of these departments shall exercise any functions appertaining to either of the others, *except* as this Constitution expressly directs or permitted.<sup>4</sup>

How is it decided which functions "properly" belong to which department, and how can the last clause permit of such exceptions without jettisoning the theory?

If this be the theory underlying state constitutions, what is the relation of governor and legislature? Professor T. V. Smith contends that he is subordinate:

In a government of divided powers, like the several American governments, the governor is not the constitutional boss of the legislature. He is logically subordinate to it. His office exists to *execute* the laws which it makes, as the judicial office exists to *interpret* the laws which it makes.<sup>5</sup>

<sup>2</sup> Constitution of Massachusetts, Part I, Art. XXX.

<sup>3</sup> *Ibid.*, Part II, Art. II.

<sup>4</sup> Constitution of California, Art. III, sec. 1. (*Italics mine.*)

<sup>5</sup> T. V. Smith, *The Promise of American Politics* (2d ed.; Chicago: University of Chicago Press, 1936), p. 198. (*Italics in original.*)

If one governmental function were intrusted in its entirety to the legislature, and a second function, logically subordinate to the former, were intrusted entirely to the governor, then the governor would be correctly described as logically subordinate to the legislature. But that is not the case. The constitutions of the American states did not attempt the fantastic task of conferring an entire function on a distinct agency. Instead they parceled out each function. Do not the constitutions make it crystal clear that the governors participate in legislation? Otherwise, what are the powers to recommend and veto? Likewise the legislatures share in administration when they confirm the nomination of executive officers. Manifestly, if identical functions be distributed between both branches, it is impossible to describe one branch as "logically subordinate." Actually they are co-ordinate. Such, indeed, was the intention of the separation of powers. Governmental functions cannot be performed under the American system without the co-operation of the separate branches. Herein lies the significance of checks and balances. Today, of a certainty, the attempt to demarcate clear-cut functions of government is impossible. Government is a single continuous process. It is true that the process contains phases. Legislating is one phase, administration another. But these are merged together and at certain points become indistinguishable. Political necessity is unifying what political theorists divided into three. The new role of the governor offers most striking evidence of this unification. It is surely a significant commentary on the social forces which are shaping the evolution of democracy that, under the separation of powers, no less than under the cabinet system, the chief executive has emerged as the leader both of legislation and of administration. Is it desirable that the tendency continue, or should the one role be divorced from the other? Can the history of the American state governments assist democracies of larger scale to refit their institutions for the stormy waters of the twentieth century?

## CHAPTER II

### HISTORICAL DEVELOPMENT OF THE GOVERNOR'S POWERS

POLITICAL traditions are the legacy of previous experiences. The attitude of the American people toward their chief executives today is to a large extent conditioned by their past history. True, the original situations which gave rise to the attitudes may have changed. But attitudes often outlive the situations and limit the political possibilities of the present. Suspicion of the executive, for example, may continue on into an era when the ground for it has ceased to exist. It may prevent an increase of his power which new conditions require. One can better understand what the governor has become by studying what he was.

The history of his position prior to reorganization divides into three main periods: (1) the Colonial, (2) the early constitutions, and (3) Jacksonian democracy. In the Colonial period the powers of the governor differed in two groups of colonies, the one composed of the royal and proprietary, the other of Rhode Island and Connecticut. In the former his position had two aspects. He was both the representative of the English king and the executive head of the colony. The colonists complained that his combining these two functions made their well-being subordinate. They resented the fact that the appointee of a faraway monarch should possess authority of vital consequence to them. In exercising his legal powers, he was not responsible to the governed. Those powers, moreover, were extensive. He appointed the chief civil officers, usually with the consent of his council, and supervised the enforcing of the laws. He was commander-in-chief of the military forces. He granted pardons and reprieves, and, in virtue of being chancellor, was head of the highest court in the colony. His share in

the legislative power was to nominate the council<sup>1</sup> and to adjourn or dissolve the assembly. He could recommend laws and had the power to veto.<sup>2</sup>

His actual power, however, was sometimes less than his legal power would suggest. Patronage was not large, and he might be impeded in enforcing laws that were opposed by Colonial sentiment. The governor was required, for instance, to enforce the Navigation Acts. But he did not appoint the port and customs officials. His military power, too, might be limited whenever British ships or troops were present, as there was likely to be a conflict of authority with the admiral or general in command. But the crucial weakness was his dependence on the locally elected assemblies for financial support. They attempted to control the conditions under which taxes could be levied and the purposes for which appropriations were granted. Even his own salary he received from the assemblies, not from the home government. Thus, the struggle between Parliament and the Stuarts was re-enacted on a different stage. Once again the antagonists were an elected legislature and an irresponsible executive; and once again the legislature found its weapon in the power of the purse.

The second group, Rhode Island and Connecticut, differed from the former in that their governors were citizens of the colony and were annually elected by the general assembly. For this reason they have been called the "prototypes of the state governor."<sup>3</sup> But the description is not quite accurate. He was a prototype only to the extent that he was a local citizen and locally elected. His powers, however, were so weak that he was little more than a "figurehead," as Beard terms him.<sup>4</sup> Indeed, on certain points—the veto power, for example—the prototype

<sup>1</sup> In Massachusetts the council was elected by the general court.

<sup>2</sup> Except in Pennsylvania, where the veto was reserved for the crown.

<sup>3</sup> F. G. Bates and O. P. Field, *State Government* (New York: Harper & Bros., 1928), p. 257.

<sup>4</sup> Charles A. Beard, *American Government and Politics* (4th ed.; New York: Macmillan Co., 1924), p. 454.



of the state governor is to be found quite as much in the royal and proprietary colonies as in this group.

From the Colonial period the transition to the early constitutions was very brief. Yet, the initial organization that was created for combating the royal authority possesses a characteristic of some significance for the future development of the executive. An irresponsible monarch was meeting resistance, the fount of which sprang from the popularly elected assemblies. When the colonists set up their own government for conducting the war and achieving independence, what was more natural than that they should distrust executive power and place their faith in legislatures? The Continental Congress tried at first to transact all its business at full meetings. It soon discovered that a legislature cannot administer, and it appointed special *ad hoc* committees of its own members. These were too transient and were followed by standing committees which included outside experts as well as members of the Congress. The control of the army offers a fantastic example of the cumbrous committee system. There were separate committees on muskets, on cannon, on powder. Thomas McKean, at one time, was a member of thirty-six such bodies. Inevitable difficulties resulted. Owing to lack of correlation, contrary orders were issued, and eventually these committees were superseded by departments under a single head who was responsible to, but not a member of, the Congress. This failure of government by committees is mentioned as early as 1777 in the preamble to the constitution of New York:

Whereas the many tyrannical and oppressive usurpations of the King and Parliament of Great Britain on the rights and liberties of the people of the American colonies had reduced them to the necessity of introducing a government by congresses and committees. . . . And, whereas many and great inconveniences attend the said mode of government by congresses and committees. . . .<sup>5</sup>

<sup>5</sup> Constitution of New York (1777) in *Federal and State Constitutions*, ed. F. N. Thorpe (7 vols.; Washington: Government Printing Office, 1909), V, 2623-24.

It need occasion no surprise that the first efforts of Americans in self-government were of this nature. Their chief institutional problem was to curb and control executive power. Of the various solutions attempted through the course of the next hundred years, the earliest experiment has more than one parallel to previous historical situations. The Romans, upon overthrowing their kings, divided the chief executive power between two co-ordinate officers, the consuls. Either could check the other, and both could be checked by the Senate or the Comitia. Popular hatred of the title "Rex" persisted for more than five centuries. Athens put an end to the autocratic rule of the Peisistratids, and in the democracy that evolved in the fifth century B.C. the executive authority was put in commission. The ten-membered board of Strategoi, and all other administrative officers, were responsible to the Ecclesia. The memory of the "Turannos" lingered with the Athenians for the lifetime of the republic. The central feature is the same in all these instances—a citizenry in revolt against irresponsible authority placed its faith in legislatures and thereafter feared the executive power. Writers have commented on the persisting mistrust of the executive in the United States. Viewed in the light of a phenomenon appearing in the wake of other revolutions, the American attitude is revealed less as a local idiosyncrasy.

The early constitutions adopted in the states are eloquent testimony to this frame of mind. The prevailing tone is confidence in legislatures, mistrust of executives. The Continental Congress had first solved the problem of curbing the executive by itself taking over the administration. The state constitutions tried a different method. The executive officers were not to be members of the legislature, yet were strictly subject to legislative domination. Their powers differed in degree, as a discussion of the three principal states will show.

The Virginia constitution of 1776 created a governor who was to be elected annually by the legislature and could have no more than three successive terms.<sup>6</sup> He had no power to sum-

<sup>6</sup> *Ibid.*, VII, 3816.

mon or prorogue the legislature, to recommend, or to veto. He was checked by an eight-membered council elected by the legislature from among its own personnel or the people at large, and he could "exercise the executive powers of government" only with their "advice and consent." The governor of Massachusetts under the constitution of 1780 also received a term of only one year and was provided with "a council for advising the Governor in the executive part of the government."<sup>7</sup> This body was composed of the lieutenant-governor and nine others whom the general court selected annually from its own members. There were other executive officers—the secretary of the commonwealth, treasurer, receiver-general, and commissary-general—all chosen for one-year terms by the general court. The governor, however, had the independence of being elected by the people; and he was granted a veto which could be overridden only by a majority of two-thirds in both houses.<sup>8</sup> He was, therefore, more of a counterpoise to the legislature than was the governor of Virginia.

Under the New York constitution of 1777 the governor was elected by the people, and for a three-year term—a surprising exception to the general rule. But his powers were quite limited. The lieutenant-governor was also elected by the people for three years; the treasurer was chosen by the legislature; and other officers were appointed by a council composed of "one senator from each great district" of the state and the governor.<sup>9</sup> There was a veto on legislation, but it was conferred on a council of revision formed by the governor and the chancellor and judges of the supreme court.<sup>10</sup> New York and Massachusetts thus had a stronger governor than Virginia. Election by the people provided an independent source of authority; whilst the veto in Massachusetts and the three-year term in New York made him potent. But the limitations on the power to appoint restricted the force which he could actually wield. Even in these two states the chief executive was far from robust.

<sup>7</sup> *Ibid.*, III, 1904.

<sup>9</sup> *Ibid.*, V, 2633-34.

<sup>8</sup> *Ibid.*, pp. 1893-94.

<sup>10</sup> *Ibid.*, p. 2628.

In general, legislative supremacy is the keynote of these early constitutions. The legislature appointed the governor in all states save Massachusetts and New York. It appointed many of the other officials, or else elected a council which shared in appointments and in other gubernatorial functions. The governor, in his turn, had little positive influence over the legislature. Only Massachusetts and South Carolina gave him the veto. His executive power was weak because the other officers usually held their positions independent of his will. As long as there are several officers separately elected, the governor will be relatively weak. No matter whether the people or the legislature chooses them, they will be independent of one another and of their nominal chief. A story is told of this early period that, "when William Hooper went home from the North Carolina Convention and was asked how much power they had given the Governor, he answered: 'Just enough to sign the receipt for his salary.'"<sup>1</sup>

Not only are these early constitutions meager in their grant of executive power; they are almost entirely silent as to how administration is to be carried on. Massachusetts had a provision that all public boards, the commissary-general, all superintending officers of public stores, and all commanding officers of forts should report regularly to the governor every three months. If, moreover, they received any letters or dispatches of a public nature, they must communicate with the governor. The requirement, however, seems more concerned with prosecuting the War of Independence than with peace-time administration. This point was emphasized by a speaker at the Massachusetts constitutional convention of 1917-18:

You will notice on examining the old Constitution, and its amendments for that matter, that there are provisions in it for very little real State administration. . . . There are elaborate provisions on the military side,—several pages with reference to the militia. The reason, of

<sup>1</sup> *Debates in the Massachusetts Constitutional Convention, 1917-8* (4 vols.; Boston: Wright & Potter Printing Co., 1918-20), III, 940. The story is told by Mr. Luce.

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course, is obvious, and that is that in 1780 the State was engaged in practically no business except public defense. That had been the experience of the State to that time.<sup>12</sup>

This observation is true of these constitutions in general. How the laws are to be executed, and how the various officials are to co-ordinate their duties, does not appear. It is a sound judgment that "American state government, in its essential principles was not originally designed for efficient, constructive public work, but was the product of temporary and peculiar conditions growing out of the revolt against Great Britain."<sup>13</sup>

The result of these first constitutions was natural enough. The framers had reacted too much against executive power and, in their attempt to insure legislative supremacy, had weakened the governors to excess. In the brief period between these constitutions and the convention at Philadelphia, men learned an important lesson. It was expressed in Jefferson's comment that a majority can be just as tyrannical as one man. It was emphasized by Madison:

The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex. . . . They [the founders of our republics] seem never to have recollected the danger from legislative usurpations, which by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.<sup>14</sup>

Hamilton reiterates the complaint: "It is one thing to be subordinate to the laws, and another to be dependent on the legislative body."<sup>15</sup> Men were beginning to realize that not even legislatures are above suspicion. The danger lies in any concentration of power as such, and it is as risky to concentrate too much in the legislature as in the executive. The remedy was to strengthen the executive as a counterbalance.

<sup>12</sup> *Ibid.*, p. 1023.

<sup>13</sup> *Appraisals of the Constitution and Government of the State of New York, 1915* (New York: Bureau of Municipal Research, 1915), p. 2.

<sup>14</sup> James Madison, *The Federalist*, No. XLVIII ("Everyman's Library" [New York: E. P. Dutton & Co., 1934]), p. 252.

<sup>15</sup> Alexander Hamilton, *The Federalist*, No. LXXI, p. 366.

Not all people saw the remedy in this way. At the Philadelphia Convention, Sherman of Connecticut clung to the old faith. He "considered the executive magistracy as nothing more than an institution for the carrying of the will of the legislature into effect." He favored a collegiate executive, which "ought to be appointed by and accountable to the legislature only." The latter was "the depository of the supreme will of society."<sup>16</sup> Gouverneur Morris, on the other side, argued for a new conception:

The Executive Magistrate should be the guardian of the people, even of the lower classes against legislative tyranny against the Great and the wealthy who in the course of things will necessarily compose the Legislative body. . . . The Executive therefore ought to be so constituted as to be the great protector of the Mass of the people.<sup>17</sup>

Hamilton supported this in the *Federalist*: "Energy in the Executive is a leading character in the definition of good government. . . . A feeble Executive implies a feeble execution of the government."<sup>18</sup>

The supporters of a stronger executive carried the day at the Convention. Aware of the weakness of the governors in the states, they took care that the president in the national government should be no cipher. The federal Constitution, when compared with the state constitutions then existing, shows an astonishing gain by the executive. His term was to be four years, and there was no restriction on his succeeding himself. He was elected independently of Congress. He had a veto on legislation. No other executive officers were elected,<sup>19</sup> and he had wide powers of appointment. At one sweep the framers of the federal Constitution gave their chief executive a position which no governor, even today, can parallel. No state constitution

<sup>16</sup> *Debates of the Philadelphia Convention, 1787*, ed. Max Farrand (2 vols.; New Haven: Yale University Press, 1921), I, 65.

<sup>17</sup> *Ibid.*, II, 52.

<sup>18</sup> *Op. cit.*, No. LXX, p. 357.

<sup>19</sup> The vice-president has no executive duties.

yet gives the governor as much power in his executive branch as the federal Constitution provides for the president.<sup>20</sup>

In conferring power on the president, the reasons for granting the veto are significant. Of the early state constitutions, only Massachusetts and South Carolina intrusted the veto to their governors. George III had refused assent to certain laws of the Colonial assemblies, and the power was, therefore, feared. Interestingly enough, it was the first grievance mentioned in the Declaration of Independence.<sup>21</sup> Now, eleven years after that document, Hamilton advocated the veto at the Convention. His reasons are clearly given in the *Federalist*:

*The primary inducement to conferring the power in question upon the Executive is, to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design.*<sup>22</sup>

The relative importance is noteworthy. The "primary inducement" was the protection of the executive from legislative encroachment. In practice this has faded far into the background. The "secondary" reason has since become dominant. In fact, the veto has given the president an aggressive role in legislating.

The federal Constitution has been discussed in this account of the governor's development for two reasons. One is that the debates at Philadelphia and the provisions of the Constitution reveal the defects already observed in the states. The state constitutions showed what to avoid. The other reason is that the federal Constitution set a pattern for the states. It showed them what to imitate. Although it is still in advance of the state constitutions, it is a model which they have been continuously approaching. The trend asserted itself more slowly in the older than the newer states. Thus, the 1821 constitution of New York gave the governor a veto, which could be overridden by a

<sup>20</sup> The nearest approximations are in Virginia and New York.

<sup>21</sup> "He has refused his assent to laws the most wholesome and necessary for the public good."

<sup>22</sup> *Op. cit.*, No. LXXIII, p. 375.

two-thirds majority of both houses. At least one speaker at the constitutional convention of that year had lost his fear of the executive:

An erroneous idea seems to have prevailed in relation to the powers and origin of the governor. Who is he? And by whom is he appointed? Does he derive his authority from the King of Great Britain? Is he an usurper? If so, let us unite to depose him. But, sir, he is the man of the people—elected by their suffrages and identified with their interests. He is a watchful sentinel to guard us from evil and a zealous friend to admonish us of error.<sup>23</sup>

A setback, however, was the reduction of his term from three to two years. Also, the legislature was to elect a treasurer for one year, and a secretary of state, comptroller, attorney-general, surveyor-general, and commissary-general for three. The 1830 constitution of Virginia lengthened the governor's term from one year to three and gave him the power to recommend. But he was still to be chosen by the legislature, which also selected a three-membered council of state for a three-year term. It was further required: "The governor shall, before he exercises any discretionary power conferred on him by the constitution and laws, require the advice of the council of state."<sup>24</sup>

The newly created state of Illinois showed the federal influence in its first constitution of 1818 more strongly than the older states of Virginia and New York. The governor was elected by the people, and for four years. He could recommend to the general assembly and require information from the executive officers. The governor was to appoint the secretary of state with the senate's approval, whilst the legislature chose the treasurer and public printer. For other positions the constitution provided: "The governor shall nominate, and by and with the advice and consent of the senate . . . appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointments are not

<sup>23</sup> Quoted in Charles E. Merriam, *A History of American Political Theories* (New York: Macmillan Co., 1903), pp. 183-84.

<sup>24</sup> Thorpe, *op. cit.*, VII, 3827.



otherwise provided for."<sup>25</sup> This was an important provision, for the power to appoint would give the governor some means of controlling administration. More possibilities are latent in a clause stating that he "may require information in writing from the officers in the executive departments, upon any subject relating to the duties of their respective offices."<sup>26</sup> This at least indicates some pre-eminence of the governor over the executive branch, and might develop into real supervisory power. The veto, however, was not solely in his hands. It was vested in a council of revision, composed of the governor and the supreme court judges, and could be overridden by a bare majority of all members elected to the legislature.

The chief significance of these changes up to 1830 is to demarcate more clearly the separation of powers. The governor's emancipation is beginning. There are signs that he will one day develop into an officer existing in his own right, that he will cease to be a mere creature of the legislature. But, as yet, his gain in power is very slight, for he is hampered by other independent officers. How can he see that the laws are faithfully executed when he does not appoint the men who administer them? De Tocqueville, who visited America in 1831, expressed the view: "In America the legislature of each state is supreme; nothing can impede its authority. . . . In juxtaposition to it, and under its immediate control, is the representative of the executive power."

In the period that comes after 1830 yet a new solution is provided to the old problem of curbing the executive. The governor is at last independent of the legislature, but his power is weakened by diffusion. At the same time legislatures began to lose popular confidence in greater degree and were increasingly subjected to constitutional restrictions. These institutional changes were the outward expression of a new ideology. They represent a new mode of thought, a new attitude of the American people. It is called Jacksonian democracy. The younger states to the west of the Alleghenies were asserting themselves

<sup>25</sup> *Ibid.*, II, 996.

<sup>26</sup> *Ibid.*

in the politics of the Union. The frontier recoiled upon the lands of earlier settlement, overthrowing the hegemony in the nation of old families in Virginia or Massachusetts, and bringing to public office *different habits born of its own experience*. These habits had the merit of embodying democratic principles. They had the defect of embodying them to excess. The chaotic confusion into which state governments had fallen by the end of the century was the result of a theory overapplied. Democracy was forced to recognize practical limitations.

It was held as a dogma that all government ought to be derived from the people's consent, and it appeared plain that government was so derived when the people elected their officials. Upsurging democracy concluded that the more officials the people elect, the more truly responsible will government become. Yet another dogma proclaimed that in a democracy all citizens have equal right to public office. There can be no hereditary or privileged class. But from this premise was drawn the unwarrantable conclusion that all citizens are equally capable of holding public office; and the awkwardness of the inference was glossed over by inserting the *minor premise* that public duties are, or admit of being made, so simple that anyone in his wits can perform them. The same two premises were used to support another equally dubious conclusion. If all citizens have equal right to public office, and if the duties of public office are essentially simple, all ought to take their turns. Office should pass around in rotation among the citizen-members of the community. Permanence of tenure was alien to democratic principles. It savored of privilege, even of monarchy. Hence, when one party ousted another *from power*, all offices, administrative equally with political, should fall into new hands.

Of course, these theories were based upon actual experience, and it is just as important to know why a theory is held as it is to know what that theory is. Appointments had mostly been made by the legislature, or by the governor with the consent of the legislature or a council. This had resulted in a scramble to

secure patronage. In New York, for instance, an unofficial system developed outside the governmental framework for the purpose of distributing jobs. It was dominated by bosses and known as the "Albany Regency." Virtually it controlled legislature and governor in selecting public officials, high and low. A speaker described it in 1915:

We all know that from 1801 [*sic*], the Governor and the Lieutenant-Governor and the members of the Legislature were the only persons who were elected, and we know that the Governor arrogated to himself all powers and the right to appoint not only all the officers of the State, but as well the county officers, and even the mayors of the cities. . . . We know that 15,000 jobs had to be distributed by an incoming Governor and we know that disgraceful scramble that was made with the inauguration of each Governor for the division of these spoils.<sup>27</sup>

This abuse was uppermost in the minds of the delegates to the convention of 1846. The problem was to loosen the stranglehold of the bosses, and the favored remedy was to increase the number that were popularly elected. Hitherto there had been a short ballot, and bosses had secured control of patronage. Now the long ballot was preferred as a means of reducing the evils of spoils.<sup>28</sup> In the new constitution the number of officers elected by the people amounted to thirteen—a governor, lieutenant-governor, secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor, three canal commissioners, and three inspectors of state prisons.<sup>29</sup> In an address submitted to the people and inviting their votes for the new constitution, it was stated:

The most important State officers have been made elective by the people of the State, and most of the officers of the cities, towns and counties are made elective by the locality they serve. They have abolished a host of useless offices. They have sought at once to *reduce* and *decentralize* the patronage of the executive government.<sup>30</sup>

<sup>27</sup> *Record of the Constitutional Convention of 1915: Unrevised* (4 vols.; Albany: J. B. Lyon & Co., 1915), III, 3348.

<sup>28</sup> See chap. vii.

<sup>29</sup> Thorpe, *op. cit.*, V, 2661-62.

<sup>30</sup> Quoted by Mr. Burkan at the New York constitutional convention of 1915 (*Record of the Constitutional Convention of 1915: Unrevised*, III, 3349) (Italics in original.)

The extension of the elective system in New York is paralleled in the Illinois constitution that was adopted only two years later. The governor, lieutenant-governor, secretary of state, and auditor of public accounts were all to be elected by the people for four years; the treasurer for two. At the same time the veto, formerly vested in the council of revision, was granted to the governor. It could still be overridden by a bare majority of all those elected to the legislature. Another two years passed, and Virginia ratified a new constitution which provided that the governor be elected directly by the people, and for a four-year term. The council was abolished. But the people would also elect a lieutenant-governor for four years and a three-membered board of public works for six. The board was to appoint its own employees, and board members could be removed only by the legislature. In addition, the legislature elected for two-year terms a secretary of the commonwealth, treasurer, and auditor of public accounts. Massachusetts, likewise, swam with the tide and multiplied the number of its officers who received popular election. Two amendments were approved in 1855: one providing that the council, formerly chosen by the legislature, should now be elected from eight districts of the state; the other, that the people should elect annually a secretary of the commonwealth, treasurer, receiver-general, auditor, and attorney-general.

These four states amply illustrate the contention that the executive had become independent of the legislature but was being weakened by internal division. In 1846 at the New York convention a speaker described the chief executive of the 1821 constitution as "a sort of nominal Governor, standing disconnected with the business and interests of the state, with his arms folded, looking on like a sentinel." Was he equally immobile under the newer constitutions? In particular, what power had he to control and co-ordinate the administrative activities of other officers? The answer is that the new governor was scarcely more effective than the chief executive whom he superseded. The election by the people and the veto had at last

made him independent of the legislature. But he had only scanty means of exercising positive authority for the simple reason that there were so many officers over whom he had no legal control. It is the view of Professor Merriam that "by the middle of the century public administration, outside the Federal government, had reached the low-water mark of decentralization in the United States."<sup>31</sup> Certainly, an examination of the constitutions of that era reveals little provision for administrative control on the part of the governor.

Thus, in this period of Jacksonian democracy, a somewhat new solution of the old problem is devised. The first solution was to administer by means of legislative committees; the second, to have executive officers appointed by the legislature and largely under its domination. The third was an executive independent of, and partly balancing, the legislature, but rendered innocuous by the distribution of executive power among so many co-ordinate holders. The people adopted the first because at that time they completely trusted the legislature and mistrusted the executive. They abandoned it because it was impossible to administer effectively with legislative committees. They turned to the second; and this too they abandoned because they saw it was dangerous to concentrate power even in the legislature. Accordingly, by the middle of the century they took recourse to the third. They began placing limitations on the legislature: they made the executive independent but weakened its power by division. The old maxim of imperialism had been: "Divide your subjects, and you can rule them." The new maxim of democracy seemed to be: "Divide your government, and it cannot rule you." It was claimed that multiplying the number of elective officers made government more

<sup>31</sup> Charles E. Merriam, *American Political Ideas* (New York: Macmillan Co., 1920), p. 135. Cf. De Tocqueville's judgment: "As the officers are everywhere elected or appointed for a certain period, it has been impossible to establish the rules of a hierarchy of authorities; there are almost as many independent functionaries as there are functions, and the executive power is disseminated in a multitude of hands" (*Democracy in America*, trans. Henry Reeve [Cambridge: Sever & Francis, 1864], Vol. I, chap. v, p. 101).

truly responsible to the people. In actual fact, the result was to cripple it. The chief executive was unable to harm the people. He was also unable to serve them. The solution savored still of mistrust. The executive had long been suspect, and the legislature had fallen under the same cloud. Democracy, it appeared, could not trust either branch. A degrading confession!

It is interesting to notice the judgment of James Bryce, writing in the 1880's.<sup>32</sup> He compares the president and the governors and points out the relative paucity of power vested in the latter. He ascribes two reasons why the system "rubs along": (1) "the executive has little to do, and comparatively small sums to handle," and (2) "local government is so fully developed."<sup>33</sup> The natural consequence is that "State office carries little either of dignity or of power." But, the governor is not yet a "nonentity," for "a sort of perfume from the old days lingers round the office."<sup>34</sup> Bryce forms the conclusion:

On the whole, the executive arrangements of the State work well, though they might, in the opinion of some judicious publicists, be improved by vesting the appointment of the chief officials in the governor, instead of leaving it to direct popular election. This would tend to give more unity of purpose and action to the administration.<sup>35</sup>

It is doubtful whether Bryce would have passed this judgment twenty years later. He could then hardly have said that "the executive arrangements of the State work well," even with the qualifying phrase "on the whole." A trend of affairs had already started before the 1880's which soon outdated this opinion. Of course, Bryce had mentioned the important reason that "the executive has little to do." As soon as the executive had much to do, the arrangements would cease to work well. The great scholar's judgment was somewhat retrospective. It is easy today to observe the phenomena which, even when he wrote, were profoundly changing American life. He could not, from his vantage point, be expected to foresee the rapidity of

<sup>32</sup> James Bryce, *The American Commonwealth* (2d ed.; 2 vols.; Chicago: Charles H. Sergel & Co., 1891), I, 507 ff.

<sup>33</sup> *Ibid.*, p. 508.

<sup>34</sup> *Ibid.*, p. 509.

<sup>35</sup> *Ibid.*, p. 526.

the industrial revolution and its impact upon the institutions of government.

The years that followed the Civil War witnessed a tremendous economic development in the United States. The resources of the country were being exploited, and the industrial age with its attendant railways and factories was producing a new social environment and necessitating new social standards. The colliding and jostling of individualistic enterprise created a *mélange* with which only the organized authority of the community could cope. Government was at last called upon to govern. Under the federal organization, be it remembered, residual powers vested in the states, and upon them fell a heavy task of ordering the new situations. It is said in a report of a commission which later investigated the government of Virginia:

The original government was planned to care for a relatively small amount of business, and as the Commonwealth has developed and grown in population, and as our economic and social life have become more complex, new agencies have been created to handle the additional functions which the State government had to assume from time to time.<sup>36</sup>

The new laws passed by the legislatures were not self-executing; they had to be enforced; and they threw an administrative burden upon an executive branch that was structurally unfitted to bear it. The legislature had to determine the agencies to be chosen for administering its laws and to whom they should be responsible. It could follow, broadly speaking, one of two alternatives. Either it might confer the new functions of government upon existing officers, insuring that they would be under the supreme co-ordinating authority of the governor, or, it might create new agencies, virtually independent of any gubernatorial supervision. These would be subject to the legislature, from which their legal powers were derived, and to the courts, by which the powers were interpreted. It was the latter alternative which found favor in legislative eyes. The legislature

<sup>36</sup> *Report of the Commission on Economy and Efficiency, 1918* (Richmond: Richmond Press, Inc., 1918), p. 24.

had lost its earlier domination of the executive officers. But it could dominate the new administrative agencies—or, at least, see that the governor did not control them. Dr. Willoughby has stated the matter thus:

The line of authority in both the national and state governments runs directly from the administrative services to the legislature, except where the latter has expressly provided otherwise.

The foregoing constitutes the theory upon which the location of administrative authority is determined under our political system. . . . For the most part administrative services were looked upon by the legislatures as their direct agents, to be directly instructed, supervised, and controlled. In some cases, indeed, the legislature has undertaken the direct exercise of administrative authority.<sup>37</sup>

In choosing this method, the legislatures failed to foresee, or deliberately overlooked, two great disadvantages. First, any supervision which they themselves could exercise would be sporadic, not continuous. Second, an executive branch so constituted would become unwieldy and amorphous. Massachusetts was a state whose administrative agencies began to multiply at an early date, naturally enough in an industrialized and populous community. Only a few years after Bryce had written his opinion of the executive arrangements in the states, Governor Russell of Massachusetts delivered a comprehensive address to the general court in which he castigated the mal-organization of the executive:

For some years after the adoption of our constitution in 1780 there were few administrative officers to be appointed or supervised by the Governor. . . . It was not then foreseen, nor has it been at any time since, how great would be the growth of executive work, and how varied and intricate the subjects of public and private interest with which it would deal. Consequently, neither by the constitution nor by any legislative act has there been established any uniform system; but, as the exigency of the moment demanded, an office has been created, apparently without much thought of its relation to the executive machinery already or thereafter to be established.<sup>38</sup>

<sup>37</sup> W. F. Willoughby, *Principles of Public Administration* (Baltimore, Md.: Johns Hopkins Press, 1927), pp. 36-37.

<sup>38</sup> Governor Russell, "Address to the General Court," January, 1892.



Just why the legislatures favored the policy of instituting a new agency for a new function is a question that clamors for answer. The report of one investigating commission says vaguely:

Economic and social conditions have grown more complex and the functions of the State have been expanding at a rapid rate. When new functions arise, the very natural procedure has been to create a new agency to perform these functions rather than to place them under some agency already established.<sup>39</sup>

It is hard to reconcile this statement with another that appears in the same context:

Often a board or a commission has been created to perform functions that belong properly to agencies already established and can be performed more efficiently and more economically by these agencies.<sup>40</sup>

If the new functions "belong properly" to agencies already existing, why is it "the very natural procedure" to create new agencies? Perhaps one can assign certain specific causes. In the first place, the request for many of the new functions was initiated by citizens interested in a project of reform or in rendering some service.<sup>41</sup> Without studying the established government to see whether their proposal could be placed under an existing officer, they would draw up a statute that created a new body and vested in it certain powers and duties. They were less inclined to engraft their function upon an established department, because a new agency was a symbol of victory and a banner around which they could rally. They knew, further, that a freshly instituted agency is likely to go about its work with a flush of enthusiasm. A long-established department

<sup>39</sup> *Report of the Commission on Simplification and Economy, 1924* (Richmond: D. Bottom, 1924), p. 22.

<sup>40</sup> *Ibid.*, pp. 21-22.

<sup>41</sup> Cf. *Report of the New York Reconstruction Commission, 1919* (Albany: J. B. Lyon & Co., 1919), p. 123: "The creation of such new bureaus is generally due to private citizens or agencies who have a laudable desire to extend the functions of a department and who think that the best way to make the extension and to obtain the desired emphasis is to create a new unit."

might operate with greater smoothness and less hubbub. But its regularity may be that of an automaton, and its quietude that of the grave.

The motivation of the interested citizen may be detected in some of the registration boards serving certain professions—medicine, dentistry, or others. The professions were growing in solidarity and would complain, on grounds partly of ethics, partly of self-interest, that unskilled quacks could practice without let or hindrance. They asked for a supervising agency which would hold examinations, grant or revoke licenses, and prosecute the unauthorized. Thus, the urge for a new agency would frequently spring from some interest group in the community. An Illinois report says in its section on agriculture: "For nearly every interest, however, unimportant and, however, closely related it may be in its nature to some other interest, a separate board has been created."<sup>42</sup> Another reason was the desire of party leaders to increase their patronage. If a new agency headed by a board were established, influential supporters could receive honorary or salaried posts, while the rank and file could be rewarded with lesser administrative or clerical jobs. This was well appreciated in New York:

Each new committee affords new opportunities to make assignments to importunate members who are often more anxious for self-advertisement than for work. Each new committee also brings in its train clerkships and other perquisites which are regularly employed to reward party service.<sup>43</sup>

Governor Alfred E. Smith, well versed in the party politics of his state, described this tendency to the writer. As his illustration he took the Soldiers' Bonus Commission set up after the World War to give a bonus to the veterans. New York already had an adjutant-general who knew the men and a comptroller who could authorize payment. But a commission was insti-

<sup>42</sup> *Report of the Efficiency and Economy Committee, 1915* (Chicago: Windermere Press, 1915), p. 636. (The quotation is punctuated as in the original!)

<sup>43</sup> *Appraisals of the Constitution and Government of New York*, p. 68.

tuted for spoils purposes. "It cost a lot to give the money away."<sup>44</sup>

A third motive—this one based on principle—was the traditional fear of consolidating power. Both the citizenry and the legislatures were disinclined to grant additional authority to those who already possessed some. If extra activities needed to be performed, let extra officers be created, independent of those existing. This is the *reductio ad absurdum* of the old theory of checks and balances. The separation of powers had been first applied between the three major branches of government. Later, it was given a special application to the executive, and the chief executive power was diffused. Now, as the last stage, the lesser administrative activities were subdivided among numerous agencies, co-ordinate with one another. Each had its own statutory authorization from the legislature; each was a petty lord in its carefully delimited domain.

Figures reveal this trend clearly. New York had ten agencies in 1800, twenty in 1850, eighty-one in 1900, and some hundred and seventy-odd in 1925.<sup>45</sup> Illinois, when it adopted the 1848 constitution, had an executive department composed of the five elective officers and three state institutions. By 1870 the state had its five officers and about twenty-five independent agencies. In 1917 there were over a hundred and ten.<sup>46</sup> Virginia had forty-eight agencies in 1903, sixty-two in 1910, and ninety in 1923.<sup>47</sup> Examples of the growth of agencies within one field of activity will paint in some details on this canvas of chaos. New York instituted fish and game protectors in 1880; a forest commission in 1885; a commission on fisheries in 1892; a forest, fish, and game commission in 1895; a forest pur-

<sup>44</sup> Governor Alfred E. Smith in interview, 1936.

<sup>45</sup> Finla G. Crawford, *State Government* (New York: H. Holt & Co., 1931), p. 182.

<sup>46</sup> *Constitutional Convention of 1920, Bulletin No. 9* (Springfield: Schnepf & Barnes, 1919), p. 624.

<sup>47</sup> *Report of the Commission on Simplification and Economy, 1924*, p. 22.

chasing board in 1897; and a water-supply commission in 1905.<sup>48</sup> Illinois, in its concern for agriculture, set up a state entomologist in 1867; a board of agriculture in 1872; humane agents (to inspect cattle at the stockyards) in 1877; a state veterinarian in 1881; a livestock commission in 1885; a board of veterinary examiners in 1889; a stallion registration board in 1909; an inspector of apiaries in 1911—need the list be prolonged?

That powers should be separated was asserted to be democratic. The dogma was being applied to excess. The condition required remedy.

<sup>48</sup> Crawford, *op. cit.*, pp. 181-82.

### CHAPTER III

#### BEFORE REORGANIZATION: THE GOVERNOR AS CHIEF EXECUTIVE

**W**HAT was the organization of the executive branch in the state governments after this "splitting tendency" had worked its fill? A cross-section view will reveal the relation of the governor to other officers and agencies. It will exhibit the defects that followed upon the inadequacy of his legal powers.

#### THE CONSTITUTIONAL ELECTIVE OFFICERS

The governor's power was severely limited by the presence of other executive officers whose authority derived from the constitution. The same fundamental law which created his position created theirs. They too were elected by, and responsible to, the people. As a consequence, they were legally independent of the chief executive. It is true that some basis for control lay in the constitutional provisions that the governor might require information from them in writing. Yet, even this was of slender value if it could not be easily enforced. Only the courts could compel obedience, and a governor would be disinclined, save under extreme provocation, to seek their remedies. Since the other elective posts were frequently regarded as stepping-stones to the governorship, there might be every incentive for an attorney-general or secretary of state to attract attention by vigorous opposition to his chief executive. As Woodrow Wilson expressed it:

Of State officials associated with the Governor it may be said that both in law and in fact they are colleagues of the Governor, in no sense his agents or subordinates, except perhaps in mere formal procedure. . . . They are not given him as advisers; they are, on the contrary, co-ordinated with him.<sup>1</sup>

<sup>1</sup> Woodrow Wilson, *State and Federal Governments of the United States* (Boston: C. Heath & Co., 1889), p. 68.

The point was emphasized in an Illinois court decision:

The Governor is neither in fact nor in theory, personally nor politically, responsible for the conduct of the Secretary [of State] or any other officer. He cannot assign him the performance of a single duty or control him in the performance of those assigned by law. He looks to the law for his authorities and duties, and not to the Governor.<sup>2</sup>

This judgment is undoubtedly correct in its description of the legal relationship. But it goes perhaps to extremes when it states that this relationship existed "in theory" as well as "in fact." The constitution of Illinois, as of other states, required the governor to see that the laws were faithfully executed. If that were the theory, it was hardly compatible with the creating of officers legally independent of him. The constitutions, in short, contained an inconsistency. When they provided for the separate election of numerous officers, they stultified their own mandate to the governor.

#### THE APPOINTIVE OFFICERS

Granted, then, that the governor could not coerce a constitutional officer, had he not adequate power over other officers? To his misfortune, even in this sphere his authority was crippled by numerous restrictions. The legislatures were greedy of patronage and wanted their share in the distribution of favors. Accordingly, there were checks to offset the governor's power to appoint. The New York legislature was particularly anxious not to forfeit its influence to the chief executive. It was said in 1915: "The offices created by statute are filled by a variety of methods, so large that it has surely exhausted the inventive genius of our legislators."<sup>3</sup> There were "at least sixteen different ways of appointing the heads of State departments, bureaus, and offices and members of commissions."<sup>4</sup> Even in Virginia, where the general assembly was not so im-

<sup>2</sup> *Field v. People*, 3 Ill. 79. Quoted in C. H. Crennan, *A Survey of State Executive Organization* (Menasha, Wis.: George Banta Publishing Co., 1916), p. 11.

<sup>3</sup> *Appraisals of the Constitution and Government of New York*, 1915 (New York: Bureau of Municipal Research, 1915), p. 101.

<sup>4</sup> *Ibid.*, p. 36.

bued with spoils traditions, the inherited mistrust of the governor produced much the same result. The administrative agencies of the commonwealth comprised in 1924 sixty-six boards and twenty-four single officers. Of the latter, ten were elected by the people and five by the legislature. Five were appointed by the governor alone, four with the consent of the senate or the general assembly. Of the boards, sixteen had ex officio membership, and twenty-two were appointed by the governor with the senate's consent. The remaining twenty-eight were chosen on the governor's sole responsibility. Thus, among the ninety agencies the governor had independent power to appoint only thirty-three.<sup>5</sup>

Other curbs were placed on the removal power and further contributed to the governor's ineffectiveness. The chief executive of Massachusetts described this limitation in 1892:

Members of four commissions and the medical examiners can be removed for sufficient cause by the Governor with the consent of the council; members of eleven commissions can be removed with or without cause by the Governor, but only with the same consent. Only eight officers, outside of the district police, can be removed by the Governor alone, upon his own responsibility. . . . Of the remaining administrative boards and officers appointed for a fixed term . . . there is no power of removal in anybody, except by the cumbrous machinery of impeachment.<sup>6</sup>

A specific instance was offered by Al Smith to illustrate this defect in his own state of New York:

When Governor Hughes came into this capitol in 1907, everybody in this State believed that he knew something about the insurance situation in this State. He had just passed a new code of insurance laws; and the duty devolved upon him immediately of reorganizing the Insurance Department, and what did he do. He turned to the statute and found that the Superintendent of Insurance could only be removed by the Senate. He preferred charges against him. . . . The Senate said, "You are mistaken. He is going to stay right there." And he stayed there.<sup>7</sup>

<sup>5</sup> See *Report of the Commission on Simplification and Economy, 1924* (Richmond: D. Bottom, 1924), p. 22.

<sup>6</sup> Governor Russell, "Address to the General Court," January, 1892.

<sup>7</sup> *Record of the Constitutional Convention of New York, 1915: Unrevised* (4 vols.; Albany: J. B. Lyon & Co., 1915), III, 3237.

The administration was further taken out of the governor's hands by the length of term allotted to many appointees. Many of the newer agencies were placed under boards, and it was the common practice to give the board members long overlapping terms specially designed to make them independent of the chief executive. In New York, for instance, the board of education had twelve members with twelve-year terms. It was pointed out:

When a Governor is inaugurated in New York, and undertakes the exercise of the executive power vested in him by the constitution, he finds himself at the head of a staff of officers already installed for two, three, four or five years, as the case may be, and able to resist his power of removal in most instances by political combinations in the Senate.

Since the governor of this state had a term of only two years, he would have to acquiesce in the continuation of many officers whom he disapproved. It was still worse in Massachusetts, where the governor was elected for one year, and heads of administrative agencies were appointed for several. Governor Russell complained that "the tenure of some commissioners and trustees is three years; of others, five; of others, seven; and of one board, eight." Could the governor fairly be required to see that they faithfully executed the laws?

Yet, even if the governor had been granted unrestricted power to appoint and remove the heads of all agencies, the simple fact of their number made effective supervision an impossibility. The trend referred to at the end of the last chapter produced an appalling conglomeration. The governor might, of course, keep himself informed of their activities by periodic reports. Suppose that he did so. The result can be imagined by a glance at the following quotation from a New York report:

Each month the Governor receives the minutes of seventeen Boards of Managers with an accompanying report of their visit of inspection to the institution under their control. These reports range in size from five to seventy-five pages. At a conservative estimate they aggregate over three thousand pages a year. . . . How much is humanly possible for the



Governor to know about these various things in addition to the other work required of him is an interesting subject for conjecture.<sup>8</sup>

Remember that these reports from the seventeen boards of managers constituted only a very small segment of the activities that were nominally under the governor's authority. Add to these the reports of at least another hundred agencies, and try to estimate how much would be required of a governor who kept track of their work. It is assuredly clear that physical limitations would alone preclude any adequate control.

#### THE GOVERNOR AS EX OFFICIO MEMBER OF BOARDS

One reason why the governor would not have the time to attend to such reports is that he was himself occupied with considerable administrative detail. It is of value to observe the functions in which he directly participated, as they throw light on the conceptions of his office then prevailing. In most states the governor served on several boards *ex officio*. He was a member of eight, for instance, in Virginia<sup>9</sup> and Illinois.<sup>10</sup> Normally, boards with *ex officio* membership are regarded as failures. The members will have other and more important duties and will sacrifice the work of the board. At any rate, each will have only one vote, and the governor may easily find himself in a minority. One example is the New York department of buildings, which was under a board composed of the governor, lieutenant-governor, and speaker of the house. They had to sign all official papers connected with public buildings of which they were trustees, and this caused much delay in arranging contracts for repairs and maintenance. During the summer months, after the legislature had adjourned, the state architect used to employ a special messenger to seek out the board members for obtaining their signatures.<sup>11</sup> The same state

<sup>8</sup> *Report of the New York Reconstruction Commission*, 1919 (Albany: J. B. Lyon & Co., 1919), p. 189.

<sup>9</sup> *Report of the Commission on Simplification and Economy*, p. 22.

<sup>10</sup> *Report of the Efficiency and Economy Committee*, 1915 (Chicago: Windermere Press, 1915), p. 950.

<sup>11</sup> *Appraisals of the Constitution and Government of New York*, 1915, p. 138.

could also boast a building improvement commission, whose members were the governor, the president of the state board of charities, and the fiscal supervisor. It appears from the minutes of this body that the governor devoted his time to such weighty matters as a shack over a wood cellar; plaster in a toilet-room; a new droplight; a henhouse; and a piggery.<sup>12</sup> Virginia conferred on such a board the difficult and complicated work of tax equalization. It was to be composed of the governor, the chairman of the state corporation commission, and the auditor of public accounts. The report of the 1924 investigation criticized the placing of this duty on "the three busiest men in the State."<sup>13</sup>

Even more serious is the system which obtains in Oregon. This western state has had no reorganization to the date of writing. Accordingly, it is a contemporary illustration of defects which existed elsewhere two decades ago. The chief executive power is to a large extent vested in a board of control composed of the governor, secretary of state, and treasurer.<sup>14</sup> This body has important financial and administrative powers and meets frequently. The governor does not by any means dominate the board. Indeed, its *raison d'être* is to provide a check on the governor when he happens to be of the Democratic party. The state of Oregon is normally a Republican stronghold. At times, however, capable Democrats succeed in winning the governorship. But, almost always the other elected executive officers and the legislature will continue to be Republican. Thus, the secretary of state and the treasurer can by a majority vote restrain the actions of a governor from the rival party. The legislature has lent an unfriendly ear to proposals for abolishing the board.

Another western state, Montana, has a similar board for curbing the governor. This state, vast in area, has a paucity of inhabitants and wealth. Since it cannot afford a large budget,

<sup>12</sup> *Report of the Reconstruction Commission, 1919*, pp. 181-82.

<sup>13</sup> *Report of the Commission on Simplification and Economy, 1924*, p. 126.

<sup>14</sup> These same three officers also form four other boards.

it must needs throw additional work on its few officers. The governor has many *ex officio* duties—far too many, indeed, to enable him to govern properly. Together with the elective secretary of state and attorney-general he sits on the board of examiners, which is the real chief executive. This board has great powers and holds frequent meetings. A former attorney-general of the state told the writer that the governor by no means rules the board. The triumvirate indulges in “trading” and “logrolling,” and the governor may be overruled. A governor of Montana complained to the writer that he had to sit on too many boards and could not possibly keep abreast of their proceedings. Indeed, at the very moment he was saying this, the water conservation board, of which he was *ex officio* chairman, was meeting in another part of the capitol. It would be in session for several days, and he would attend for about an hour to catch the gist of the discussion.

Such requirements that the governor himself directly participate in administrative minutiae are of manifest futility. They defeat their own ends. The governor has so much to do that he cannot give time to all the boards. If, however, he does attend, either he is frittering away his energy on henhouses and piggeries or he has to secure a majority vote on important matters by “trading” with the other members. In neither case can there be effective over-all supervision of general administrative policy.

#### FINANCIAL CONTROL

It may be asked whether the governor was able to direct other officers and agencies through the power of the purse. Did he enjoy a financial control which might facilitate an influence over other matters? This weapon is essential to executive authority. Agencies that are financially independent will operate with administrative independence in all spheres. Actually, no budget systems were introduced into the states until the second decade of the twentieth century. Before this time there was no proper provision for fiscal management. The governor lacked sufficient power to present estimates to the legis-

lature or to supervise the administering of the appropriation bill. The Illinois constitution, for example, provided that the governor at the commencement of each regular session of the general assembly should "present estimates of the amount of money required to be raised by taxation for all purposes."<sup>15</sup> But, the efficiency and economy report of 1915 declared:

So far as your Committee is aware, no Governor has heretofore ever complied with this important constitutional duty. The failure to do so has undoubtedly been due in the main to the fact that the executive authorities as organized have not afforded the Governor the facilities needed to perform this duty. Just as the number of minor offices and boards under his nominal supervision prevents any effective control over their action; so too it prevents any adequate examination of their requests for appropriations on which the Governor can base his recommendations.<sup>16</sup>

The failure of the governors to submit any statement of estimated revenues was paralleled by their omission to present a program of expenditures. The constitution, indeed, required that they set forth the financial needs of the state in a report to the general assembly. The committee found, however, that this had not been done.<sup>17</sup> As a result each agency made its own request for an appropriation independently of the governor.<sup>18</sup> The fiscal system in New York was just as faulty. The legislature strongly desired to keep all possible control over the allocating of funds and resented any attempts by governors to formulate a budget. "Pork-barrel" procedure had become a fine art at Albany. Legislators strove hard to secure money for public works in the localities which they represented. Agencies competed with one another before legislative committees, and items were considered piece-meal with no proper regard for a comprehensive financial policy. The governor was powerless to influence the appropriations.

To administer the appropriation bill was doubly difficult because legislatures resorted to contrary devices for restricting the administrative agencies. On the one hand, if there were an

<sup>15</sup> Art. V, par. 7.

<sup>16</sup> *Report of the Efficiency and Economy Committee, 1915*, p. 22.

<sup>17</sup> *Ibid.*, p. 23.

<sup>18</sup> *Ibid.*, p. 22.

item which the governor would be likely to veto, it would be lumped together with other items which he favored. He could not kill one without the other. The opposite trick was to subdivide a single item into unnecessarily small fragments and enact each as a separate item. This was intended to prevent administrative discretion. The Illinois Appropriation Act for 1913 exemplifies these habits. It contained, in all, some fifteen hundred items. Certain of these amounted to over \$1,000,000, whilst others were as detailed as \$75 for rubber stamps and \$50 for steel bars.<sup>19</sup> Statutes of Illinois provided that all agencies should send the governor semiannual reports of all money which they received or disbursed; but the reports were not sent.<sup>20</sup> The pre-audit did not exist in any state. That is to say, there was no continuous control of expenditures prior to the payment of the money, on the score of policy. There were audits which examined the legality of disbursements, but no executive officer inspected the wisdom of particular projects to see whether they harmonized with a general administrative plan.

Under these circumstances a balanced budget could be nothing better than a fluke. As no unified program of expenditures was drawn up, there could be no accurate calculation of revenue requirements. It was quite uncertain what amount would eventually be appropriated because of the competitive lobbying that surrounded the committee hearings. In addition, the governor would be likely to veto certain items, and this would alter the total. The legislative committees which dealt with appropriations often worked separately from those whose concern was the raising of taxes, and—confusion worse confounded!—special appropriation bills would be introduced without providing for the funds to finance them. The whole procedure for enacting the budget can only be characterized as haphazard, unscientific, and perilous.

<sup>19</sup> *Ibid.*, p. 197.

<sup>20</sup> *Revised Statutes*, chap. 102, sec. 8: quoted in *Report of the Efficiency and Economy Committee*, 1915, p. 202.

The appropriation bill was administered in no less faulty a manner. Each agency would receive its own allotted sum, and there was no centralized system of quarterly assignments. If the agency chose to return an unexpended balance to the treasury, well and good. If it spent money unnecessarily in order to have the satisfaction of using the last cent in its appropriation, no power could check it. Whilst, if it incurred a deficit, none but the legislature could call it to account. The arguments for a system of financial control were overwhelming.

#### LEGISLATIVE CONTROL

The usefulness of the chief executive was yet further reduced by the manner in which the legislature drafted its laws. Not content with creating a new petty agency for each function, the legislature prescribed its powers so rigorously as to leave little to its discretion. It was to be with a vengeance "a government of laws and not of men." Bryce observed this tendency in the 1880's and made the comment: "Executive discretion is extinct, and the officers are the mere hands of the legislative brain, which directs them by statutes drawn with extreme minuteness."<sup>21</sup> Wilson declared just as emphatically: "The control of law is thorough and complete: statutes leave to no officer, either central or local, any considerable play of discretionary power: so far as possible they command every officer in every act of his administration."<sup>22</sup> The administrative disadvantages of this practice call for little elaboration. To deprive officials of discretion blocks their initiative, stunts their creativeness, and routinizes their energy.<sup>23</sup> If they are subject to the law alone, and not to any superior in the hierarchy of officialdom, they are in practice co-ordinate with one another. At the Massachusetts constitutional convention of

<sup>21</sup> James Bryce, *The American Commonwealth* (2d ed.; 2 vols.; Chicago: Charles H. Sergel & Co., 1891), I, 509; cf. *ibid.*, pp. 507-8.

<sup>22</sup> *Op. cit.*, p. 75.

<sup>23</sup> Cf. Marshall E. Dimock, "The Role of Discretion in Modern Administration," in *The Frontiers of Public Administration*, by Gaus, White, and Dimock (Chicago: University of Chicago Press, 1936), pp. 45-65.

1917 Josiah Quincy exclaimed: "We have a large number of organs or agencies of government which are absolutely independent of any authority or control whatsoever. They simply are created by law and proceed to exercise the powers vested in them by law."<sup>24</sup>

The legislature, which had once dominated the executive officers, had lost control over them in the developments of the early nineteenth century. By the end of the century it was ignoring those officers, and particularly the governor, when it instituted new administrative agencies. Although the constitutions had made the chief executive independent, the legislatures could at least see that the new agencies were not placed under him. Their lack of control over the governor would not matter if he were given only unimportant duties. The important duties would be intrusted to those whom they could control. As another delegate remarked at the same convention: "Our present conception is to elect a figure-head Governor, a man who has important ceremonial functions, some power of supervision, some minor duties, but who is not the administrative head of the State."<sup>25</sup>

#### MAJOR DEFECTS

The "Lilliputian administration" which has been sketched led to three major defects (1) duplication, (2) waste, and (3) irresponsibility. Duplication inevitably arose when numerous small agencies performed diminutive functions in one large field. However carefully the legislature might define their powers, modern life was too tangled for precise definition. Especially if one agency chanced to be bustling and energetic, jurisdictional conflicts were unavoidable. Illinois witnessed an overlapping between the food-inspection service and the public health authorities. Food inspectors supervised the milk supply, whilst inspectors of the board of health duplicated their

<sup>24</sup> *Debates in the Constitutional Convention of 1917-8* (4 vols.; Boston: Wright & Potter Printing Co., 1918-20), III, 956.

<sup>25</sup> *Ibid.*, p. 959.

work in examining the sanitary condition of dairies and the handling of the milk.<sup>26</sup> Contrary orders were given from time to time, and the emissaries of the sovereign state engaged in unseemly squabbling. There were three distinct agencies which issued charters to corporations, and as many which regulated their conduct.<sup>27</sup> The administration of revenues was intrusted to the several hands of the governor, auditor of public accounts, state treasurer, secretary of state, attorney-general, state board of equalization, and the insurance superintendent.<sup>28</sup>

New York was organized on a similar labyrinthine pattern. Taxes, for instance, were collected by the insurance department, the secretary of state, excise department, tax commission, and comptroller. The public resources were under the jurisdiction of a conservation department; but it was supplemented by forty-odd agencies which controlled the individual parks, reservations, and historic buildings. The departments of health, labor, and agriculture separately examined the manufacture and sale of foods. One was to inspect meat, another milk, a third bakeshops and restaurants. The manufacturer might receive successive visits from as many as seven agencies, for industries were regulated in most of their phases.<sup>29</sup> In the field of public welfare twenty departments, boards, and commissions supervised the thirty-nine state hospitals, charitable institutions, and prisons.<sup>30</sup> The charitable institutions, eighteen in number, offer a good illustration of the difficulties. To decide a building program, the state board of charities, the fiscal supervisor, and the building improvement commission, shared responsibility. Salaries could be adjusted only by the joint efforts of the fiscal supervisor, state board of charities,

<sup>26</sup> *Report of the Efficiency and Economy Committee, 1915*, pp. 20 and 694.

<sup>27</sup> *Ibid.*, p. 747.

<sup>28</sup> *Ibid.*, p. 144.

<sup>29</sup> Bureau of Municipal Research, *Report on the Government of the State of New York: Organization and Functions, 1915* (New York: Bureau of Municipal Research, 1915), p. viii.

<sup>30</sup> *Report of the Reconstruction Commission, 1919*, p. 169. The number in the text excludes the local boards.



and salary classification commission. The institutions were liable to be investigated by the state charities aid association, the state architect, commissioners of health and of prisons, the New York Prison Association, the conservation commission, the department of education; not to mention the board of charities and the fiscal supervisor. The outcome was: "They are overrun daily with inspectors and official visitors whose chief function appears to be to criticize conditions over which the managers have practically no control."<sup>31</sup>

Virginia and Massachusetts exemplified an identical defect. The former divided the enforcement of labor laws among a bureau of labor and industrial statistics, an industrial commission, bureau of industrial rehabilitation, and a commission for the blind. In the latter state there were a board of labor and industries and an industrial accident board. In both commonwealths several agencies covered the same territory, and left manufacturers in confusion by the variety of their inspections. Perhaps, the most vivid depiction was a letter sent in the state of Minnesota to the fire marshal:

DEAR SIR: The hotel inspector has ordered me to put in a new floor. One of your deputies has instructed me to tear down the building. Which shall I do first?<sup>32</sup>

Either each agency will try to do too much, in which case there is conflict, or each will shirk its own responsibility and throw the blame on another. Jealousy and hostility, or apathy and inertia, will prevent harmonious co-operation in fulfilling the purposes of the state. A speaker in Massachusetts applied to his state government a New England saw about boy labor:

The old farmer said: "One boy is a boy; two boys is half a boy; three boys is no boy at all." And it is very true. It is the same with the executive. "One executive is an executive, two executives are half an executive and three executives upon the same job is no executive at all."<sup>33</sup>

<sup>31</sup> *Ibid.*, p. 179. Quoted from a deputy fiscal supervisor.

<sup>32</sup> Quoted in J. S. Young, "Administrative Reorganization in Minnesota," *American Political Science Review*, IX, No. 2 (1915), 275.

<sup>33</sup> *Debates in the Constitutional Convention of 1917-8*, III, 1084.

The second defect, waste of time and resources, branches from the first. So complicated an organization dissipates both money and energy. An obvious example of an administrative device which saves funds is the centralized purchasing of supplies. By buying in larger quantities and under most opportune market conditions, the state can easily economize. In all four states supplies were purchased chaotically. "To-day," said the 1924 report of Virginia, "there are approximately eight hundred independent purchasing agents within the Commonwealth, who are buying supplies for State agencies and county units without any standards, co-operation or ascertainment of what other agencies in the State are paying for similar articles."<sup>34</sup> The numerous visits of inspection were another source of waste, for they added to the traveling expenses.

At the same time the very establishing of a new agency for each new function often resulted in higher overhead costs that could have been partly eliminated by utilizing some existing department. Two delegates to the Massachusetts convention made this crystal clear. As one expressed it:

When there was a little piece of work to be done we have set up a new commission or department to do it . . . but every time we do that we create another drain upon the treasury of the Commonwealth for offices, for overhead expense, for all kinds of expense. . . . That is one reason why the expenses of this Commonwealth are climbing by leaps and bounds, because every little commission is coming before the Legislature and saying: "We are doing a good work. Give us more money."<sup>35</sup>

Another speaker cited a flagrant example. In 1909 he was chairman of a legislative committee and had referred to him a bill sponsored by the secretary of a commission who wanted an increase in his salary from \$1,800 to \$3,000:

I . . . asked the secretary how many hours he put into the office a week. He said he went to his office two days a week, and two hours a day, and he got \$1,800. He did not give up any of his regular business or his regular practice. . . . I asked him if \$1,800 for four hours a week did not pay him sufficiently. He said yes. Then I asked: "Why do you

<sup>34</sup> *Report of the Commission on Simplification and Economy, 1924*, p. 27.

<sup>35</sup> *Massachusetts, Debates, 1917-8*, III, 1062.

want your salary increased?" He replied: "There are other secretaries in the State House who don't put in any more time than I do. They get \$3,000 and \$3,500, and I believe we all should be used the same."<sup>36</sup>

There is no need to labor this point. Lilliputian administration was expensive administration. It was as uneconomical as it was inefficient.

Irresponsibility, the third defect, may seem surprising. Was it not the great purpose of Jacksonian democracy to make government responsive to the people? Such indeed was the motive behind the subdivision of functions. Government would become irresponsible only if power were overconcentrated. Multiply your officers, and you could control each in his weakness. The theory, however, committed suicide. It killed itself when it was applied in practice. For, whom were the people to hold responsible? Actually, they should regard each agency as separately accountable to themselves. But the people were even less adequately equipped than the governor to survey the maze. Even so, it would be hard to enforce control over a board. Which particular members were the responsible parties, and how could they be reached? Public opinion could look only to the person who was in their view—the governor. Taking his title at its face value, they sought from him a remedy of abuses over which he had little or no control. It is common for governors to make this complaint in their messages, and the various state reports re-echo it. In New York, for instance, the public utilities were regulated by two commissions. Each had five members appointed by the governor with the senate's advice and consent. A governor in a single term could only appoint a minority. Yet public sentiment regarded the effectiveness of public utility regulation as an index to the success of his administration.<sup>37</sup> In Virginia a report expressed surprise at the lack of central administrative control over state officials. A head of a department could take a trip, carry on some emergency work, or gratify any other fancy, without waiting for the

<sup>36</sup> *Ibid.*, p. 1088.

<sup>37</sup> *Appraisals*, 1915, pp. 176-78.

governor's permission.<sup>38</sup> Whilst, in the words of a former chief executive of Massachusetts:

The Governor has absolutely no authority over a commission in this State. By condescension, by favor, he is permitted by the legislature to name the members of boards and with certain restrictions to remove them. . . . The Governor has no constitutional authority to issue an order to a single board in this State. . . . You give him no power. You tie his hands. You check him at every turn by an Executive Council. Yet the people hold him responsible for the efficient management of the State's business affairs.<sup>39</sup>

In short, the legislature had made each agency independent but had neglected to provide for controlling them. If their policies diverged, the most that could be hoped was a voluntary compromise. Jurisdictional conflicts were fought out with increasing friction, and the governor could not order the combatants to cease and desist. "Each State department," said a Virginia report, "is a little kingdom unto itself and their respective employees are as separate and distinct as if all were not servants of the same master, to wit: The State of Virginia."<sup>40</sup> A theory of democracy, misconceived and overapplied, had produced deadlock.

<sup>38</sup> *Report of the Commission on Economy and Efficiency, 1918* (Richmond: Richmond Press, Inc., 1918), p. 39.

<sup>39</sup> David I. Walsh, *Massachusetts, Debates, 1917-8*, III, 1035-36.

<sup>40</sup> *Report of the Commission on Simplification and Economy, 1924*, p. 32.

## CHAPTER IV

### BEFORE REORGANIZATION: THE GOVERNOR AS CHIEF LEGISLATOR

THE discussion of the last chapter exhibited only one face of the coin. It was concerned with the legal relationships that prevailed in the executive branch of the state governments. But government, as a dynamic agent, consists of far more than an agglomeration of legal powers. Allowance must be made for the political factors which modify constitutional and statutory provisions. It is they which clothe the legal bone structure with living tissue. Perhaps the chief executive could supplement his deficiencies by extraneous aid. Perhaps there was more actual working cohesion than would otherwise appear. Political power and legal power are the mortise and tenon joints which dovetail together in the machinery of government.

There is a view which holds that political parties were the unifying potency. In fact, the *raison d'être* of the party, the function which it performed in the governmental system, was this very one of unification. If that is so, in order to discover who led the government, one must know who led the party. The answer given is that the party, and thereby the government, was dominated by a boss. Frank J. Goodnow advanced this thesis. There had to be, he contended, some central direction in the executive branch; and, since this could not be achieved within the legal framework, it had to be infused from without.

The argument is attractive. It does contain an element of truth and is valid provided that it is not overstated. The power of the boss was the resultant of several causes; some economic, some sociological, some political. It cannot be attributed to one factor alone. Admittedly, the governor was weak,

and the executive branch was poorly organized. The connection between this and the emergence of the boss is that the governor's weakness facilitated the latter. Because the governor was so weak, he could not offer any serious opposition to the boss. This is not positive causation. By his weakness the governor encouraged the strong boss: he could not stand in his way.

That bosses were powerful in some states during this period of gubernatorial impotence is a familiar and well-attested fact. Two famous former governors illustrate it in their biographies. Theodore Roosevelt was chief executive of New York State at the time of Platt's ascendancy.<sup>1</sup> He says explicitly: "Senator Platt picked me for the nomination."<sup>2</sup> . . . . At the time when I was nominated for Governor, as later when Mr. Hughes was nominated and re-nominated for Governor, there was no possibility of securing the nomination unless the bosses permitted it."<sup>3</sup> La Follette wrote to the same effect about his state of Wisconsin:

The bosses did not regard the selection of a candidate for Governor as a matter in which the voters of Wisconsin were entitled to have any voice. During a recess in the sessions of the convention, Governor Upham was summoned before an executive session of the Wisconsin bosses, informed that he would not be given the endorsement of a renomination, and his successor, Edward Scofield, was chosen.<sup>4</sup>

Another autobiographer, the famous journalist, Lincoln Steffens, relates what he discovered on his visit to Rhode Island:

There was an elected Governor . . . . Dr. Lucius F. C. Garvin. . . . He was not the actual Governor. A blind man, General Charles R. Brayton, the political boss, was the actual permanent Governor or dictator of Rhode Island. . . . General Brayton received in the sheriff's

<sup>1</sup> See Harold F. Gosnell, *Boss Platt and His New York Machine* (Chicago: University of Chicago Press, 1924).

<sup>2</sup> Theodore Roosevelt, *Autobiography* (New York: Scribner's & Co., 1920), p. 270.

<sup>3</sup> *Ibid.*, p. 277.

<sup>4</sup> Robert M. La Follette, *Autobiography* (Madison, Wis.: Robert M. La Follette Co., 1913), p. 189.

office the lines of visitors who had business with the State, openly. And openly he did that business. He ran the legislature across the hall. He said so; everybody knew it; and he ran it for business men.<sup>5</sup>

Elihu Root summed up his forty years of acquaintance with the government of New York State in his dramatic speech to the delegates of the 1915 convention:

From the days of Fenton, and Conkling, and Arthur and Cornell, and Platt, from the days of David B. Hill, down to the present time the government of the State has presented two different lines of activity, one of the constitutional and statutory officers of the State, and the other of the party leaders,—they call them party bosses. . . . For I don't remember how many years, Mr. Conkling was the supreme ruler in this State; the Governor did not count, the legislatures did not count; . . . It was what Mr. Conkling said, and in a great outburst of public rage he was pulled down.

Then Mr. Platt ruled the State; for nigh upon twenty years he ruled it. It was not the Governor; it was not the Legislature; it was not any elected officers; it was Mr. Platt.<sup>6</sup>

The rule of the bosses, the "invisible government," was no isolated symptom, and it was plainly helped by the governor's ineffectiveness. It is important to remember that there were limits to the number of successive terms which a governor might enjoy, limits imposed either by custom or by the constitution. Governors came and went, but the party remained. The boss, therefore, exercised leadership which was continuous, and it was hard for the procession of transient governors to build up power against him. Governors could not be re-elected sufficient times to remain head of the party; and, if one boss were overthrown (Conkling, for instance), another soon arose. Elihu Root attributed boss rule directly to the division of powers among the constitutional elective officers, the "six-headed executive."<sup>7</sup> He could, just as truly, have attributed it to the shortness of the governor's tenure. In fairness, however,

<sup>5</sup> Lincoln Steffens, *Autobiography* (New York: Harcourt, Brace & Co., 1931), p. 465.

<sup>6</sup> *Record of the Constitutional Convention of 1915: Unrevised* (4 vols.; Albany: J. B. Lyon & Co., 1915), III, 3387-88.

<sup>7</sup> *Ibid.*, p. 3389.

to the boss one point must be granted. He did not always choose weak or corrupt men for the governorship. Platt picked Theodore Roosevelt. Later, he acquiesced in the nomination of Charles E. Hughes. Both men admittedly were of such popularity at the time that they were virtually forced on the boss. But, the fact remains that bosses did heed public opinion—at least when it was aroused. To that extent, they were democratic. For the most part, however, they selected loyal camp-followers; a reward for past services, and an encouragement to the others.

With the turn of the century came a change. There was a great reaction throughout the country against "big business" and the political powers allied with it. Farmers in the West wanted regulation of railroad rates, and liberals in the East favored control over the public utilities. The "muck-raking" of men like Steffens showed the connection between the big capitalists and the bosses. Government, it was asserted, was corrupt, and the "malefactors of great wealth" were the corrupters. But, the economic interests could not be regulated without the overthrow of the political system which they manipulated. The assault on the strongholds of big business had first to raze the outlying fortifications. The bosses had to be defeated. Now, the men who were leading the attack saw that they could best achieve their ends through the governor's office. Let them appeal directly to the people; let them go above the heads of party nominating committees and force the fight into the open. It was this period, therefore, which witnessed a renaissance of the governor. The reformer sought to enhance the political power of the governorship. But this power was to be used primarily in securing legislation. Rates must be regulated by law, and agencies had to be instituted for enforcing the provisions. The governor's renaissance was not as chief executive but as chief legislator. He was to become leader of the legislature. And such, indeed, was the result. In the Far West, Hiram Johnson became governor on the slogan: "Kick the corporations out of politics." The great railroads



had dominated the political life of California. Legislators had subserved their interests. Johnson demanded that railroads be subject to regulation. He had to organize his own party, secure the election of his followers to the legislature, and drive through the desired law by his leadership. In the Middle West La Follette had a stirring struggle against the political bosses and the railroads. The farmers were bled by the rates that were charged for shipping their produce. La Follette had a long battle until he was elected and re-elected governor and had a majority favorable to him in the legislature. Charles E. Hughes in New York and Woodrow Wilson in New Jersey engaged in similar combats, and on the national level Theodore Roosevelt was attacking the corporate interests with the support of liberal Republicans like Borah of Idaho. The governor was, thus, attaining a new position. He was champion of the people, the representative of the small man. He became essentially a "political" leader in the true sense—a leader in "policy"-making.

Some quotations from the sources will depict this new role of the chief executive. La Follette first became governor of Wisconsin in 1901. He was elected after a campaign in which he made the definite proposals of taxing railroads and instituting the direct primary. In his *Autobiography* he mentions that as soon as his nomination had been assured he "began to think of what our convention platform should be and what we should try to do in our first legislature."<sup>8</sup> At the opening of the session he read his message to the legislature in person in order to "invest the whole matter with a new seriousness and dignity that would not only affect the legislators themselves, but react upon the public mind."<sup>9</sup> He "used all the power and prestige of the office to secure the legislation that had been promised to the people," and in two of his veto messages arraigned the legislature as derelict of duty.<sup>10</sup> Finding in his first term that he could not secure the passage of his bills while the old-time politicians

<sup>8</sup> La Follette, *op. cit.*, p. 241.

<sup>9</sup> *Ibid.*, p. 243.

<sup>10</sup> *Ibid.*, p. 274.

dominated the legislature, he decided to indorse his own candidates:

I am free to confess that it had been my great ambition to be Governor of Wisconsin, not just to be Governor . . . but to be in reality the chief executive of the state; to be a strong factor in securing legislation that should build into the life of the people a new order of things. . . . It was an unheard of thing for the Governor of the state to "interfere" in the nomination of candidates for the legislature. . . . I selected districts in which those men who had wronged the public were seeking renomination, and almost without exception in those districts where I held meetings I secured the defeat of the candidates who sought renomination.<sup>11</sup>

Theodore Roosevelt, energetic in his occupancy of the governorship in New York, gives his own account of what he experienced:

In theory the Executive has nothing to do with legislation. In practice, as things now are, the Executive is or ought to be peculiarly representative of the people as a whole. As often as not the action of the Executive offers the only means by which the people can get the legislation they demand and ought to have. . . . More than half of my work as Governor was in the direction of getting needed and important legislation.<sup>12</sup>

In Massachusetts, by the time of the 1917 constitutional convention, the same had become true, and it was emphasized by a delegate:

Or what does a candidate for Governor talk about when he is running for election? Does he talk primarily about his record as an administrator? . . . He talks, and this is I think true of every campaign, about policies. The executive runs for office upon policies.<sup>13</sup>

The interesting and significant feature of this development is that the governor, in order to lead the legislature, makes his appeal directly to the people. He comes before the public eye and focuses popular attention on issues which he favors. As La Follette said: "It had seemed to me in the very beginning that a public official should deal with the people whom he was to serve."<sup>14</sup> Roosevelt declared: "I made no effort to create a

<sup>11</sup> *Ibid.*, pp. 333-36.

<sup>12</sup> *Op. cit.*, p. 282.

<sup>13</sup> *Debates in the Constitutional Convention of 1917-8* (4 vols.; Boston: Wright & Potter Printing Co., 1918-20), III, 985. The delegate is Josiah Quincy.

<sup>14</sup> *Op. cit.*, p. 63.

machine of my own, and consistently adopted the plan of going over the heads of the men holding public office and of the men in control of the organization, and appealing directly to the people behind them."<sup>15</sup>

That the governor in some states successfully emerged as chief legislator should be sufficiently indicated by the foregoing citations. It is natural to ask how he was able to succeed. What were the elements that compounded to form his leadership in the co-ordinate branch of the government? The reaction against bossism and demands for social legislation were rather the occasions than the original causes of the governor's renaissance. What were the causes?

The governor was elected from the entire state. He had an advantage over members of the legislature, for each represented only a fragment of the community. It was the governor more than anyone else who could voice the needs of the whole state and propose means of satisfying them. Prestige attached to his office—the "perfume" that lingered from the days of old<sup>16</sup>—and he was sure of a hearing. Reformers who were anxious to ameliorate the government had to capture the governorship as well as the legislature. For the governor had two constitutional powers which gave him an entree in legislation. One was the power to recommend. It had previously been put only to perfunctory use. Godkin commented in 1898:

The President and every Governor of a state have the right to send what we call "messages" to the legislature, . . . but it is very rare for these recommendations to have much effect. The messages are rhetorical performances, intended to give the public an idea of the capacity and opinions of the writers rather than to furnish a foundation for law-making.<sup>17</sup>

But this power became a very different thing when a governor placed his recommendations directly before the people, as well

<sup>15</sup> *Op. cit.*, p. 280.

<sup>16</sup> See the quotation from Bryce, chap. ii, p. 24, above.

<sup>17</sup> Edwin L. Godkin, *Unforeseen Tendencies of Democracy* (Cambridge: Houghton Mifflin & Co., 1898), p. 105.

as before their elected representatives. It was an "unheard-of thing" for La Follette to campaign with definite legislative proposals and to read his message to the legislature in person. Recommendations that were made with the vigor of men like Johnson, Wilson, or Roosevelt could not be neglected by the legislature. If the legislators fought shy, they were treated with the methods which Governor Hughes employed in New York:

He had an important measure to bring before the Legislature of New York and the Legislature pigeonholed it and would not consider it; . . . And then Governor Hughes said: "I will bring this matter before the people of New York," and he made a campaign up and down the whole length and breadth of New York stirring up the people,—with what plea? "Please write and talk to your representatives and get them to vote for this measure in the public interest." And to a large degree, he succeeded in bringing public opinion to bear upon the Legislature.<sup>18</sup>

But it is important to remember that there is a proviso attaching to the use of this power to recommend. The governor who recommends assumes responsibility. It is his duty to make clear and precise proposals. A speaker at the Massachusetts convention argued in favor of the executive budget on this very score. If the governor were to submit a program of expenditures, he would have to reduce his policies into its financial terms. Previously he had been able to arouse the people on behalf of a measure, and would cast on the legislature the odium of refusing if it proved financially or administratively impossible:

Most of the Governors . . . have inserted in their inaugural a recommendation for strict economy. Then they have gone on and recommended projects which, if carried out, would involve the expenditure of millions of dollars, and left the Legislature the task either of finding the money or of rejecting the propositions. It is a very easy thing . . . to recommend old age pensions. . . . But when it comes to spending the money, it is the General Court which does the taxing and the General Court which gets the responsibility and the unpopularity. . . .<sup>19</sup>

This warning is a just one. If the governor recommends, he should present a scheme fully worked out and not leave to

<sup>18</sup> Mr. Walker, *Debates in the Massachusetts Constitutional Convention of 1917-8*, III, 995.

<sup>19</sup> *Ibid.*, p. 1160.

others the task of converting his general idea into detailed provisions. He must assume responsibility for all or none. This, at least, is a safeguard against scatter-brained suggestions. Strictly construed, of course, the recommending power was not really intended as a positive force in securing legislation. It was the power merely to make suggestions, and these were presumably to be judged on their own intrinsic merit. Even though they emanated from the governor, they possessed no authority superior to those of any individual legislator. Actually, however, the prestige of his office and his ability to voice a public demand gave tremendous weight to his wishes.

Much the same was true of his other great constitutional power, the veto. In theory this was negative and destructive. It was a check on legislative action and did not give the governor positive influence. Yet, it may be admitted, even a negative use of the veto might smack of leadership and assume positive character. Bryce observed this possibility, even in the days before the governor had become an aggressive initiator of legislation. He remarked that in ordinary times the vetoing of bills was a governor's most serious duty; it was in this "quasi-legislative capacity" that he usually made or marred a reputation. A governor might be considered the more meritorious, the greater the number of bills to which he refused approval!<sup>20</sup> This same emphasis on the veto as a curb appears in Illinois:

Aside from the few cases which have just been commented upon, [the power of the governor in a few states to submit amendments to bills] the governor's veto power in Illinois and other states is a power of preventing action and not one of positive share in the legislative action to be taken. The veto power as such has become in the state of Illinois an almost purely negative influence, because of the fact that most bills sent to the Governor are passed in the last days of the session.<sup>21</sup>

But this power is capable of being, and has been, employed to give it a very different character. Since the governor must

<sup>20</sup> James Bryce, *The American Commonwealth* (2d ed.; 2 vols.; Chicago: Charles H. Sergel & Co., 1891), I, 475, 509-10.

<sup>21</sup> Constitutional Convention of 1920, *Bulletin No. 9* (Springfield: Schnepf & Barnes, 1919), p. 572.

ultimately either approve or disapprove each bill, he is plainly interested in its contents. He knows that, and legislators know it. It is only natural under such a system for the governor to make his wishes heard beforehand. The sponsor of a bill would usually prefer to make a compromise with the governor in the committee stage than run the risk of losing his whole proposal when it comes up for the governor's signature. There was much discussion of this at the Massachusetts convention, stimulated by some examples of the practice that occurred in that state during the year 1917. Members of the legislature complained that the governor would express his views in private conference. If he thought fit, he might even go back on his word and leave legislators in an awkward position. They had to debate in the open. Theirs was the public responsibility. The governor could easily evade being called to account for suggestions which he made behind closed doors. Josiah Quincy stated:

The Governor . . . in many cases, lets his views be known while a measure is in committee; and the committee, knowing that the Governor has the last word . . . very often backs down to the Governor's views. That is an absolutely irresponsible exercise of the executive power. . . . There is no record of the Governor's position. Members of the committee are deputed to see him. He tells them privately in his office what his objections are. . . .<sup>22</sup>

An attempt of Governor McCall to evade responsibility was cited by another delegate. The governor had sent a message to the legislature requesting that the fares on the Boston elevated railway be raised, and had asked a representative to put the bill through. The latter started to carry out his wish, but the legislature rebelled against the proposal and made several amendments. The governor then denied that he had ever asked the representative to sponsor the measure. Apparently, similar instances were of frequent occurrence, for this same delegate expressed the opinion that "the members of the Legislature are sacrificed many times because Governors take unfair advantage of them."<sup>23</sup> Thus it is quite possible for the

<sup>22</sup> *Debates in the Constitutional Convention of 1917-8*, III, 932.

<sup>23</sup> *Ibid.*, p. 909.

governor to accept responsibilities in private which he will not shoulder in public. The veto, in particular, can be used as a bargaining weapon with which to secure the votes of legislators. The governor may threaten to veto their bills unless they in return vote for his. To many this use of the veto power may seem ethically indefensible. But, if the governor intends to be chief legislator, he will naturally utilize his limited resources in any way that will attain his ends.

In addition to the constitutional powers, the governor had party influence with which to lead the legislature. The boss had been leader of the party, and the governor, by supplanting him, succeeded to this position. The chief executive, in short, at last became a leader. That is what happened in Wisconsin. La Follette could effect little until he had his own party entrenched in the legislature. He was ruler of the state, and he retained his control even after he left the governorship and went to the United States Senate. Johnson did the same in California. He broke the power of the machine by creating his own party. During the legislative session, the lieutenant-governor and speaker would meet with him every morning in his office and arrange the program for the day. He was the political leader, the leader of the legislature, not they. In New York the power of the Republican bosses, though diminished, continued just because Theodore Roosevelt and Charles E. Hughes did not build up their own parties. Roosevelt opposed Platt on many points, but he did not overthrow the boss. Hughes, too, belonging to the liberal wing of the Republican party, had conflicts with the reactionary leaders of the machine. Though he carried his way on some measures, their influence survived. New York State did not achieve reorganization until a Democratic governor took the leadership of his party and retained it throughout four terms of office.<sup>24</sup> Here was continuous leadership.

In Massachusetts, although no governor built up his own party, there are references enough to the fact that the governor

<sup>24</sup> See below, chap. vi.

was regarded as party leader. Indeed, in a term of only one year a governor could be little else than a legislative leader. He had no time to learn about the manifold activities of the administrative agencies. As a speaker said at the 1917 convention:

The members here who have served in the Legislature know that the upper branch has had a great deal said against it, and it has been criticized in many cases by obeying orders from the executive chamber, such as "Kill this bill, kill that bill, do not let them come to me." You will recall a great deal of that experience in your legislative careers. You know that you have been called upon frequently to sacrifice your own personal views and those of your constituents for the purpose of saving your party.<sup>25</sup>

Josiah Quincy, however, minimized the party influence in the general court. He agreed that the governor acted as legislative leader, and he pointed out that much of this leadership was exercised in private. But he felt that the party tie was not so strong in Massachusetts:

Now we all of us know the conditions which exist in Massachusetts, that there is not very much of a party line drawn in our General Court. . . . But in many States the Governor is the leader of his party and does propose what may be called party measures.<sup>26</sup>

However, whether or not the governor exerted party influence in Massachusetts, it is sufficiently well attested that he did so elsewhere—as Quincy himself admitted.

*Naturally, one asks next whether the governor employed patronage, for parties and patronage have become associated ideas. When the boss dominated, patronage would obviously be his perquisite; did the governor, when he overthrew the boss, employ the same method? Two chief executives emphatically denied that there was any need for patronage—although their statements cannot be taken quite at face value since, to some extent, they are self-contradictory. La Follette declared:*

Never in my political life have I derived benefit from the two sources of power by which machine politics thrives—I mean patronage, the con-

<sup>25</sup> *Debates in the Constitutional Convention of 1917-8*, III, 907-8.

<sup>26</sup> *Ibid.*



trol of appointments to office, and the use of large sums of money in organization. . . . When I became Governor I appointed supporters of the Progressive movement to offices whenever there were appointments to make. . . . As soon as I had the legislature with me in 1905, I secured the passage of the strongest Civil Service law that could be framed. . . . If you are going direct to the people, you have no need of patronage.<sup>27</sup>

Of course, appointing one's close supporters to top positions is a species of patronage; though every governor will naturally want department heads to be men of his way of thinking, and it is desirable that they should be. Patronage takes on a different flavor when it means appointing the party's rank and file to subordinate administrative posts which ought not to be assigned on a political basis.

Theodore Roosevelt, who as governor had to cope with the well-intrenched system of Boss Platt, stated: "I made no effort to create a machine of my own, and consistently adopted the plan of going over the heads of the men holding public office and of the men in control of the organization, and appealing directly to the people behind them."<sup>28</sup> But Lincoln Steffens reports his using a different tone when as president he needed congressional votes:

"I am on to the crooked machines," he [Roosevelt] said, "and the machinists, too. Yes, even in the Congress." "What are you going to do about them and their demands for jobs for their heelers?" "Deal with them," he snapped. "If they'll vote for my measures I'll appoint their nominees to Federal jobs. . . . I'll play the game, appoint their men for their support of my bills, but . . . their men that I appoint have got to take my orders and obey them up to the hilt."<sup>29</sup>

Governors adopted this attitude not infrequently. The executive and the legislature had been separated by the constitutions, but politics could close the hiatus. If it is desirable that the gap be closed, one could argue that the end justified the means. Certainly, neither branch is more to blame. If it is "corrupt" for a governor to give patronage to the legislator in return for his vote, which side is "guilty"? The governor who

<sup>27</sup> *Op. cit.*, p. 68.

<sup>28</sup> *Op. cit.*, p. 280.

<sup>29</sup> *Op. cit.*, p. 505.

offers or the legislator who receives? Some governors, of course, wield party influence, but do not base it on patronage. La Follette made a party, but, if his own testimony be accepted, did not use the spoils method. Others may employ patronage without creating a party; they may form a personal bloc bound together by obligations for favors, something distinct from the regular party organization.<sup>30</sup> At any rate, there is no doubt that the governor was in a position to play the spoilsman should he find it necessary or desirable. To this extent he was the legatee of the boss.

The governor, then, could at times display leadership in the legislative branch. It is a fact worth noting that this political power might bolster up his authority in the sphere that was nominally his—the executive. His legal powers could be enhanced by personal force of character and by his influence in the party or among the people at large. Legal disabilities might thus be partially offset by an extra-legal assumption of power. Thanks to this, the administrative work of the state might be less disorganized than a glance at the legal relationships would indicate. A Johnson, for instance, or a La Follette did have a great deal of authority in the executive branch; but it was due to other factors than the powers conferred by constitutions or statutes. Illustrations are difficult, for such authority is intangible and eludes definition. But it was hinted at by a speaker at the Massachusetts convention, who argued, contrary to the views of many other delegates, that a governor did have plenty of power over the boards and commissions:

On another occasion, when Roger Wolcott was Governor, we had certain commissioners who were holding down jobs in the State House, receiving substantial salaries, putting in their transportation expenses as well as for their keep. One of these commissioners tried to explain this away, but not satisfactorily to Governor Wolcott. The Governor had sent for him, and asked the question: "Is it true that while you have been drawing \$3,000 a year from the State treasury with an office in the State House, you are collecting transportation and your living expenses from the State treasury?" He replied: "Yes." The Governor said: "If

<sup>30</sup> See below, chap. ix.

you don't resign at once, I will use every power there is in this office to remove you." It is needless to say the command was obeyed to the letter. There is no difficulty about a Governor with a backbone doing things when he has real things to do.<sup>32</sup>

In this instance, of course, the commissioner had been guilty of a financial irregularity. Naturally, if he took a stand against the governor, the governor would bring the matter into the open, and publicity would compel the resignation. But, when there are no irregularities, it may be hard for a governor even "with a backbone" to obtain full co-operation from every agency. Certainly, it is unsatisfactory for the chief executive to depend on party influence or publicity when he should be able to secure obedience by executive authority alone.

A disadvantage of this extra-legal power is its ephemeral character. Legal powers, once given, belong to all governors alike. The power acquired outside would add to this, but it would have to be reacquired by each governor. The chief executive does not inherit personal ascendancy or party influence from his predecessor. The La Follettes and Johnsons, the Hughes' or the Wilsons, were not of the ordinary stamp of governors. They were exceptional men. One needs, therefore, to qualify the statement that there was a renaissance of the governor in the first decade of the twentieth century. In the forty-six states that then composed the Union only a few were of this mold. But, on the other hand, because such governors did emerge, and within a short space of years, it is a phenomenon worth noting. They might attract lesser men to imitate them. At any rate, they showed clearly that there were possibilities of leadership in the governor's office. They were becoming the voice of the inarticulate majority. They were swaying the debates of the legislature.

The outcome was paradoxical. The legislatures had, as much as possible, taken the administration out of the governor's grasp. The authority over the separate agencies was in their hands, not in his. Now the governor was retaliating by

<sup>32</sup> *Debates in the Constitutional Convention of 1917-8*, III, 1069.

assuming leadership over the legislature.<sup>32</sup> The legislature was controlling the administration; the governor was controlling the legislature. An ironical development of the "separation of powers"! But this contained a good presage for the future. If governors were beginning to lead public opinion and guide the legislature, they were not likely to be content with their weakness in the executive domain. Was it not natural that they should turn their new leadership to their own account? They could at last secure authority over the administrative agencies. The legislature was the source of power for these agencies. By controlling the source, the governors could hope to control the product.

It was, indeed, imperative that an attempt should now be made to reorganize the executive branch. The functions of government were yearly increasing. The state was ceasing from its inert and passive role. It could no longer "let alone" while "natural laws of economics" tolerated the social evils of industrial advance. Government had to adopt a new role. It was forced to be active and creative, to play a positive part in the life of the people.<sup>33</sup> If the government of the new century was to *do* more, the "doing branch," the executive, would attain greater importance. That this branch be organized so as to act efficiently was essential. The services which the new state was offering to its citizens required care in thought and planning. They were as intricate and complex as the social environment in which they were being applied. The work of government became more technical. It demanded the expert. Where were the thinkers and planners to organize and coordinate these services? And where was the expert personnel to administer? Competent over-all supervision had to be com-

<sup>32</sup> Cf. George W. Spicer, "From Legislative Chief to Administrative Chief," in *Essays on Governmental Administration*, eds. M. E. Dimock and C. G. Haines (Baltimore: Johns Hopkins Press, 1935), p. 98: "The developments of a century and a half in the office of the Governor of Virginia carried him to a position of legislative leadership and administrative impotence."

<sup>33</sup> For this view of the newer aspects of government see Marshall E. Dimock, *Modern Politics and Administration* (New York: American Book Co., 1937).

bined with scientific execution. The strong chief executive and the career civil servant were indispensable to each other. The Jacksonian hypothesis had lost whatever plausibility it might once have possessed. The facts of the machine age made it evident that administrative tasks were not so simple as to be easily performed by anyone in his senses. Since this premise had fallen out of the syllogism, the principle of rotation in office could no longer carry conviction.<sup>34</sup>

To whom could the people turn? At an earlier epoch, they might have sought help from the legislatures. But this branch had fallen into disrepute. It was under fire for subserving the corporate interests and the various localities of the members. As Elihu Root declared to the New York constitutional convention in 1915: "We found that the Legislature of the State had declined in public esteem and that the majority of members of the Legislature were occupying themselves chiefly in the promotion of private and local bills, of special interests."<sup>35</sup> The legislatures were not so bad everywhere. In Massachusetts, for example, the general court had preserved a better tradition. But, on the whole, it was true that the people did not look in this direction for their salvation. The opportunity was the governor's. The one man could give leadership where an assembly could not.

The problem was a fundamental one. Could a people who professed democratic institutions organize its government in a manner that was both efficient and responsible? Did it have sufficient confidence in its agents to intrust them with extended power? And how would those agents employ the power so granted? The social needs of the time raised all these questions. The reorganization movement attempted to supply the answers.

<sup>34</sup> See above, chap. ii.

<sup>35</sup> *Record of the Constitutional Convention of 1915*, IV, 4458 (concluding address).

## CHAPTER V

### THE AIMS OF REORGANIZATION

**W**HAT were the aims of the reorganization movement, and how did it propose to remedy the defects of the executive branch? The term "reorganization" could be given two meanings—one restricted, the other broad. By the former was meant the regrouping of administrative agencies. Independent bodies would be merged into one, or co-ordinated as *divisions of a single department*. It was the process of consolidating "a large number of small operating units into a small number of large operating units". Critics have characterized this as "bureau-shuffling." The latter sense includes the former and adds certain allied reforms, such as short ballot, executive budget, and centralized purchasing. Viewed in this light, reorganization is a far wider concept. It approximates to reconstitution of the executive branch.

Both senses are found in the literature. Professor Harvey Walker, for instance, writes:

Others fail to discriminate between administrative reorganization as such and the adoption of improved technical devices for centralized control and co-ordination—the budget, centralized personnel administration, centralized accounting, and centralized purchasing. . . . Most of the reorganized states have had one or more of these devices in operation before the adoption of their reorganization plans; . . . It is only important here to note that it is to them rather than to reorganization per se that most of the financial advantages from reorganization schemes should be credited.<sup>1</sup>

In this passage the term is restricted in meaning. Professor Walker talks of "administrative reorganization as such" and "reorganization per se," distinguishing this from other "de-

<sup>1</sup> Professor Leonard D. White, lecture at the University of Chicago, July, 1937.

<sup>2</sup> Harvey Walker, *Public Administration in the United States* (New York: Farrar & Rinehart, 1937), pp. 83-84.

vices." Elsewhere, however, the wider sense is used. Thus, Mr. J. M. Jacobson describes the movement as "a composition of several reform plans," of which no one state has accepted all. He applies "reorganization" to all these schemes collectively.<sup>3</sup> For the present study the writer is following the broader usage, and the term "consolidation" will be employed in the narrower sense. The broad usage is necessary in discussing the development in the power of the governor. If the narrower meaning were chosen, certain reforms, such as the executive budget, which undoubtedly increased the governor's authority, would have to be omitted.

But, the term stated in its broad sense needs to be more closely analyzed. Just how much did it include, and what principles does it embody? Various attempts have been made to enumerate the characteristics of the movement. One is that of a president of the United States, who, after many of the state governments had been reformed, wanted the national government to be modeled on a similar pattern.:

It seems to me that the essential principles of reorganization are two in number. First, all administrative activities of the same major purpose should be placed in groups under single headed responsibility; second, all executive and administrative functions should be separated from boards and commissions and placed under individual responsibility, while quasi-legislative and quasi-judicial and broadly advisory functions should be removed from individual authority and assigned to boards and commissions.<sup>4</sup>

Another synopsis of essentials is found in the report of a commission that investigated New York State. It outlined the principal recommendations as being: (1) consolidate the separate agencies into a few departments, (2) vest power to appoint and to remove department heads in the governor, (3) consolidate the budget system with accounting control over

<sup>3</sup> J. M. Jacobson, "Evaluating State Administrative Structure—the Fallacy of the Statistical Approach," *American Political Science Review*, XXII, No. 4 (1928), 932.

<sup>4</sup> Herbert Hoover, "Message to Congress, December 3rd, 1929," quoted by A. E. Buck, *Administrative Consolidation in State Governments* (New York: National Municipal League, 1928), p. 4.

spending officers.<sup>5</sup> A third list is that of a scholar who has himself contributed to many of the reorganization schemes in various states. Mr. A. E. Buck summarizes the principles as: (1) "Functional departmentalization of administrative agencies." (2) "Fixed and definite lines of responsibility for all departmental work," each department being under one man appointed and removable by the governor. (3) "Proper co-ordination of the terms of office of administrative officials." (4) "Boards undesirable as purely administrative agencies."<sup>6</sup>

There is a large measure of agreement in all these statements of governing principles. Yet, despite risk of repetition, a fourth list may be offered. It will be arranged in descending order according to the degree of contribution to the governor's power: (1) establish an executive budget, formulated and administered under the governor's authority; (2) place each administrative agency under one man appointed by the governor and removable at his pleasure; (3) make the separate agencies as few as possible. Perhaps all these might be summed up in the single sentence: Recognize the governor's responsibility for directing all administrative activities of the state.

Each of these principles and their implications represent a tremendous advance in American thinking about government. At the time of the conflict with Britain and the framing of the early state and federal constitutions there had been a great burst of energy in the study of political science. Both the debates of the Philadelphia Convention and the *Federalist* essays combine abstract speculation on political fundamentals with sound practical insight into what was then and there feasible. The conflict over slavery and the right to secede provided the next occasion for thinking and writing about the nature of political institutions. The third great opportunity came in the opening decade of the twentieth century. A grave condition affected American government on all three levels. Practical

<sup>5</sup> *Report of the Reconstruction Commission of New York State, 1919* (Albany: J. B. Lyon & Co., 1919), pp. 4-5.

<sup>6</sup> *Op. cit.*, pp. 5-6.



solutions had to be devised, but they had to be grounded in principles of government. This new search for principles meant the questioning of many cherished dogmas and undisputed assumptions. The American people had clung to what they believed was true democratic theory—"the least governed are the best governed"; "the tasks of government are essentially simple"; etc. The actual results forced the inquiry whether their democratic theory might be only one of the possible democratic theories. Perhaps they had adopted an incorrect interpretation. Might it be that they could apply this same faith in other institutional forms?

The need to re-examine postulates and rebuild governments led to the great development in the study of political science that has characterized this century. Outward expression of the trend was seen in the American Political Science Association, founded in 1904; the beginning of journals such as the *American Political Science Review* (1906) and the *National Municipal Review* (1912); and the establishing of research organizations, of which the New York Bureau of Municipal Research (1906), was a pre-eminent example. Through these mediums and the writings of professors of political science there was a deliberate intellectual effort to base governmental reform on sound theoretical foundations.

One of the most fruitful ideas in this movement was that institutions must be planned. The framework of the administrative agencies had to be reconstructed in systematic manner. It is true that there had been planning in the era of the early constitutions. What else were these documents but plans of government? But this was a planning directed to the main constitutional fabric. It settled the broad relations and functions of the major branches of government. It paid less attention to the internal organization of each branch—that was to be decided by statute.<sup>7</sup> Such procedure was understandable

<sup>7</sup> The branch that usually receives the fullest detail is the legislative, regarded at that time as the most important. The composition and powers of the two houses are made clear. Much less is said about the internal structure of the judiciary or the executive.

for the men of that day. Their concern was with the architectural aspects of constitution-building. Administrative activities did not bulk large in the operations of the state, and the powers of the respective officers could reasonably be left to legislative discretion. But, as the community need for governmental services increased, the need for planning in the executive branch grew correspondingly. Legislatures, as was seen above, followed no plan in creating new agencies; until an authoritative committee could say: "We have watched the growth of boards and commissions transform the executive branches of our State governments into grotesque agglomerations of independent and irresponsible units, bogged by the weight and confusion of the whole crazy structure."<sup>8</sup> In its essence, reorganization was the process of systematizing the chaotic and amorphous. There are parallels to the score in other fields. When case law grows bulky and unmanageable, there is generally a movement to codify. Reorganization was similar. It was the codifying of the executive branch.

The need to infuse rationality into the executive branch led to the formulation of the principles which have been listed. The sum of them all was to emphasize the governor's responsibilities. The governor must begin to govern. For this to be accepted, many shibboleths had to be abandoned. One was the traditional mistrust of the executive which still lingered in many quarters. The people must at last exhibit their confidence in a governor of their own choosing. Another was the surrender of the tenet that power should be diffused among the greatest possible number of holders. Experience had taught that power so diffused either ceased to be power or became power in irresponsible hands.

Two analogies from American life facilitated the spreading of the new viewpoint. Men who decried the weakness of the governor could contrast the position of the president in the national government. Even he, of course, did not possess all

<sup>8</sup> *Report of the President's Committee on Administrative Management* (Washington, D.C.: Government Printing Office, 1937), p. 37.

requisite executive powers. Studies were showing that the tendency to create commissions semi-independent of the chief executive was leaving its mark. Important administrative activities were being placed in agencies beyond his reach—the Civil Service Commission, for example, and the Interstate Commerce Commission. Nor was there as yet a proper budget system by which the president could control expenditures. Yet, despite some parallel defects, the president occupied a position immeasurably superior to that of his state analogue. He at least was the only elective executive officer in the national government. He had a few main departments headed by single officers whom he appointed and could remove. He had his cabinet to advise him. In short, he was no figurehead. With this example before their eyes advocates of reorganization could easily argue that, if the people trusted the president with such authority, they could assuredly give a similar status to the governor.

Another lesson was ready at hand in the type of organization favored by large corporations. The customary structure was to have a president responsible to a board of directors. He appointed the vice-presidents in charge of various divisions of the enterprise. Here was unified management under a chief executive, and, to all appearances, successful. American business had expanded on a wide scale and had acquired a reputation for efficiency. Clearly it was deplorable that a nation, which organized its business affairs efficiently, should exhibit malorganization in government. Why could not government, it was asked, absorb some of the techniques which were seemingly beneficial in the other sphere?

The governor, then, was to profit from the analogy with the federal government and with corporate organization. He was to be a chief co-ordinator, the apex toward which all the lines of the hierarchy converged. Implied in this was a change in the relation of administrative agencies to the legislature. If they were to be consolidated under the governor, they would not be directly responsible to the legislature as heretofore. The

*governor would represent the whole executive branch, and the agencies would answer first to him. The administration was to be "integrated." This decrease in direct legislative control was rendered all the more necessary by the growing importance of discretion in administrative work. The day was past when the legislature could draw up the statutes of "extreme minuteness" to which Bryce alluded.<sup>9</sup> The complicated and swiftly changing environment had to be governed by flexible rules which were unsuited to statutory form. The legislature's control over administrative work could not be continuous. Only the governor was able to provide such control. Hence, necessity strengthened him at the legislature's expense.*

The executive budget principle was fully in accord with this line of thought. Sound financial policy was impossible unless the estimates of spending agencies were revised by one central office and submitted to the legislature as a coherent work program. The formulating of requests was to be an executive function; the legislature would grant the money. The budgetary practices in Britain were largely drawn upon by the sponsors of the idea. Goodnow, Cleveland, and Buck all favored an approximation to the English system with such changes as were required by the separation of executive and legislature. Not only was the governor to supervise the requests; he was also to supervise the use of the appropriations. He needed some agency which would perform functions similar to those of the Treasury in Whitehall. Next, the administrative agencies were to be placed under single heads. If the governor had power to appoint and remove, it was assumed that he could then direct policies. Boards were to be eschewed. They generated the evils of delay, of faction, and of shirking. The governor could not be responsible for their actions. With one man in charge, responsibility was fixed and control became simpler. Lastly, the departments formed by the consolidation of independent agencies should be as few as possible. The governor could not concentrate attention on a jungle of

<sup>9</sup> See above, chap. iii.

jurisdictions. Confine him to a small area, and he could give effective supervision. Administration would proceed more smoothly because there would be fewer independent officers to reconcile and harmonize.<sup>10</sup>

By the application of these principles it was hoped to abolish the three major defects of the executive branch. These were described as "irresponsibility, duplication, and waste."<sup>11</sup> Their removal was the objective of the reorganization movement; in their place it was hoped to substitute "responsibility, efficiency, and economy." The institutional changes were, after all, means to an end and must be examined in the light of the ultimate purposes.

The first two decades of the twentieth century witnessed a series of movements, all of which had the common aim of making government more responsible to the people. The vogue for political reform sought expression in the various devices of direct primary, popular election of United States senators, the initiative, referendum, and recall, and reorganization. It is reasonable to suppose that, if these were allied in time, they were also allied in idea. Of course, the respective panaceas—for so they were hailed by their proponents—were directed to different local ailments of the body politic, and that is why they differed in the treatment prescribed. Yet, underlying the variations is a similarity of purpose which unites them. All are movements for reforming the machinery of government. All recognize that governmental functions are increasing in importance while governmental institutions are decreasing in effectiveness. The people must be given more opportunity for exerting their influence on the government which was to serve them. This could be accomplished in various ways. The direct primary would insure that the people nominate their own candidates, not merely assent to those offered by the machine. Popular election of United States senators expressed the dis-

<sup>10</sup> The actual results of all these hypotheses are examined below, chaps. vii and viii.

<sup>11</sup> See above, chap. iii.

trust of the state legislatures. The people would elect their own senators and eliminate the intrigues and cabals which had attended election by the legislature. Initiative and referendum manifested the same suspicion. The people could correct faults of omission or commission on the part of its representatives. Recall was a weapon for voicing displeasure against a corrupt or incompetent official, a Damocles' sword hanging over his uneasy head.

In this scheme of ideas reorganization finds its place. The people could not understand an unwieldy government; and what they could not understand, they could not control. Governor Dixon of Montana expressed this view in a mixed oriental metaphor: "The 'Chinese puzzle' of state government in Montana is yearly becoming more and more complicated. We will never solve it until we cut the Gordian knot, and enact the short ballot for elective officials." Others besides this governor evinced bewilderment at the condition of the state governments. President Taft observed to the New York constitutional convention:

The study of the state government, like this of New York, with 150 different commissions spread all over the state, only arouses in me the same feeling that I have with respect to our methods of conducting our courts—profound admiration for the political adaptability of the people to make a machine work that nobody who had any real business sense would think would work under any other conditions. They get along somehow. It costs them double what it might. But so it is.<sup>12</sup>

The remedy which the reorganizers proposed was to simplify. The structure must be changed. It was not enough to redecorate; the whole edifice needed redesigning. Woodrow Wilson summed it up by saying that reorganization was "the key to the whole problem of the restoration of democratic government in this country."<sup>13</sup> People were realizing that the inter-

<sup>12</sup> New York State Constitutional Convention (1915), *Documents*, No. 11, p. 3. Quoted in L. D. White, *Introduction to the Study of Public Administration* (New York: Macmillan Co., 1926), p. 115.

<sup>13</sup> Quoted in the *Report of the Commission on Simplification and Economy in Virginia, 1924* (Richmond: D. Bottom, 1924), p. 15.

pretation of democratic theory which they had favored did not attain the great objective of responsibility. One of the state government surveys declared:

The remedy for the present defects of democracy is to be found only in more democracy—simplifying the processes of government so as to place the people in a position to see and to understand. This has been the main object of all the recent reorganization of State administration. Nothing can take the place of an interested and informed electorate.<sup>14</sup>

The desire for efficiency sprang from a slightly different set of motives. Mention was made above that business administration had acquired prestige in American ideas. Its system was contrasted with the cumbrous methods of government. Efficiency was worshiped as a fetish, and the ideas that dominated in one sphere were transferred to another. Taylor, a pioneer in the study of large-scale organization, was at this time carrying on his researches into scientific management in industry. His doctrines had repercussions on government. The bureaus of municipal research were staffed by men who aimed to improve the management of state and local affairs. Reorganization has just been viewed among certain other movements which attempted to increase responsibility to the people. Now, it can be given a different setting. It may be seen as part of a trend to remove some of the checks and balances in American institutions. Municipal government was being overhauled by the introduction of the commission and manager plans. The short ballot had the same purpose of eliminating checks; and, more recently, one may connect with these reforms the Nebraska experiment of the one-house legislature.

All these developments, along with consolidation of agencies, exhibit a tendency to concentrate power. The doctrine of checks and balances was not conducive to speedy decisions and concerted action. It was noticed earlier that the separation of powers (to which checks and balances form a corollary) was first applied as between the three major branches of government, and then internally within the executive.<sup>15</sup> Now, the

<sup>14</sup> *Ibid.*, p. 215.

<sup>15</sup> See above, chap. ii.

executive was to be reorganized on a new principle. Checks on the governor were to be abolished, and the powers formerly diffused were to be drawn together. At the same time many of the cities were abandoning the mayor and council system and were adopting plans which centered responsibility. Similarly within the last three years one state has set the example of consolidating the two houses of its legislature. One trend, therefore, of which reorganization is a part, intended to increase responsibility to the people. Another, of which it was also a part, attempted to promote efficiency.

What is the relation between the two? Are they entirely compatible? The crux of the problem is whether officials who are given power to act more efficiently for the people will remain responsible to the people. To turn it the other way round, can the people retain control over those whose powers they increase? The people were reforming government for two reasons: it had become irresponsible and was rendering inadequate service. The remedy was to grant the power to perform services and to make the elective officers responsible. But was there any guaranty that the elective officers, with their powers increased, would be any more under control than the bosses had been? As Theodore Roosevelt once said: "You cannot give an official power to do good without at the same time giving him power to do harm." There's the rub. If the official is weak, he is incapable of doing harm; but he is equally incapable of doing good. The less checks there are, the more efficient he can be; but also, the less checks, the less control over him. Could reorganization reconcile the two needs of greater efficiency and greater responsibility?

The third aim, economy, is perhaps the most puzzling. It is hard to discover just how it was interpreted. Usually the word was coupled with efficiency, and the phrase was loudly echoed in the literature of the time. "Efficiency and economy" is a slogan which appears in the messages of governors, the titles of investigating commissions, and the preambles of legislative enactments. But, what did it mean? It is unfortunate



that the phrase can be given alternative senses, depending on the final aims that were in view. On the one hand, economy may refer to a reduction in the total amount of state expenditures. If people believed that governments were spending too much, they could advocate economy in the sense of giving governments less money. This in turn would involve a remission of taxes; and the beneficiaries would be those who paid most of the taxes, the more substantial members of the community. Efficiency would then entail the elimination of waste in methods of administering. Granted that the total expended be reduced, let government make the most it could out of what was left. As much as possible should be attained with as little as possible. With this interpretation, economy appears the main objective, efficiency the subsidiary one.

The second interpretation places efficiency first and gives it an entirely different meaning. A government is efficient when it has provided adequate services to those who need them. It is not a profit-making institution like a corporation. Its fundamental aim is to give service, and it must give this, even at a financial loss. An efficient government is one that fully satisfies the needs of its citizens. Obviously, this involves much more government spending than heretofore, and a corresponding increase of taxes. The beneficiaries would be mainly the poorer groups who required more help from the state. Economy, under this latter interpretation, would mean somewhat the same as efficiency under the former. It would aim at abolishing all agencies and procedures which induced waste of resources, delay in time, and duplication of effort.

Here, then, is an ambiguity. Which of these alternatives was intended by the sponsors of the movement? Was reduction of expenditures or extension of services nearer to their desire? These questions are quite relevant to the study of the increase in the governor's power. Institutions operate in a social context and cannot be divorced from it. To estimate the value of any institutional change, one has to know what community

purposes it was going to serve. *Cui bono*<sup>16</sup> is the criterion for judging a government.

Actually, evidence can be produced to support both interpretations. In the first place, state expenditures had been steadily rising. The total spent by all states in 1890 was less than \$90,000,000. It was \$185,754,282 in 1903, \$382,551,199 in 1913, and \$635,370,150 in 1919. There were two chief causes for the increase. Government was doing far more than formerly—building better roads, hiring more schoolteachers, etc. Also, prices were rising, or, to express it differently, the purchasing power of the dollar was decreasing. Governments had to give higher salaries and pay more for their materials and supplies. To keep pace with the increase in expenditures, taxes rose similarly. The citizen became aware of the fact, an awareness that had political relevance. Hence, there are many pleas for reduction of expenditures and of taxes. At the New York constitutional convention, Mr. Tanner, chairman of the state committee of the Republican party, complained about the rising tax rate:

In 1895 it was twelve million; that is, the expense outside of our canal and highway bond issues. . . . In 1900 it was seventeen million. In 1905 it was twenty-four million. In 1910 it was thirty-four million, and in 1914 it was forty-two million. The increase in the tax in the last twenty years has been 235 per cent, and the increase in population has been 53 per cent.<sup>17</sup>

Virginians similarly were conscious of this trend, and the committee of businessmen appointed by Governor Byrd in 1926 referred to it as "a great national problem":

During this period our national wealth has increased 79 per cent, the combined total of State, local and national taxes throughout the U.S. has increased 442 per cent. Virginia is happily in a more advantageous condition than many other States, yet, the burden of taxation may become oppressive, unless by reorganization of the State government our expenditures are made with efficiency and economy.<sup>18</sup>

<sup>16</sup> Cicero relates that a certain Roman judge always used to ask the question *Cui bono?* ("Who stood to gain?").

<sup>17</sup> *Record of the Constitutional Convention of New York, 1915*, III, 3206.

<sup>18</sup> *Report of the Citizens Committee on Consolidation and Simplification* (Richmond: D. Bottom, 1927), p. 3.

In this quotation the meaning to be attached to efficiency and economy is clear enough. Reduction of taxes is the end in view, and reorganization is a means of attaining it. Massachusetts heard similar protests at its constitutional convention,<sup>19</sup> and the point was bluntly put by the supervisor of administration in his report for 1920:

At the risk of placing myself in jeopardy in certain directions, I must express to you my conclusions that the time for retrenchment has arrived. The taxpayers of the Commonwealth have reached the limit of paying; and maternalistic tendencies and policies should be brought to a sudden halt, in order that the State may have a necessary period to catch up with legislation and recoup finances.<sup>20</sup>

Of course, in the years after 1918 the influence of the war must be taken into account. Illinois, the first state to reorganize, was also the only one to do so before the United States entered the war. The gigantic outburst of energy which accompanied mobilization raised expenditures and taxes still further. Prices rose likewise and multiplied yet more this increase in the amount of dollars spent by the states. But, as is ever the case during wars, available money was devoted to armaments, and domestic improvements had to bide their time. Hence, at the end of the war, the state governments faced a situation which involved inconsistent aims.<sup>21</sup> There was, on the one hand, a strong subsiding of the war fever, a desire for return to "normalcy." The country voted overwhelmingly Republican; of the five occasions on which Al Smith ran for the governorship of New York, 1920 was the only year in which he lost. Many wanted government expenditures to return to the pre-war level, and the wish was intensified by the knowledge that falling prices would enable the state to purchase its supplies more cheaply. Yet simultaneously there was vital need to expand social services and make up for time lost during the war. There were practical problems to be met—overcrowded hospitals, in-

<sup>19</sup> Cf. *Debates of the Massachusetts Constitutional Convention, 1917-8* (Boston: Wright & Potter Printing Co., 1918-20), III, 1069.

<sup>20</sup> *Report of the Supervisor of Administration, 1920* (Boston: Wright & Potter Printing Co., 1920), p. 16.

<sup>21</sup> See Jacobson, *op. cit.*, pp. 929-30.

adequate office buildings, insufficient highways. Thus many of the states were constrained willy-nilly to embark on building programs and raise their expenditures and taxes yet further. H. W. Dodds surveyed the messages delivered by governors in 1921. He mentions the frequent demands for "economy." But "the governors hold out no alluring prospect of lower taxes. No sane observer expects this in view of the expanding scope of governmental activities. What our governors hope for is greatly increased efficiency in the work of the state."<sup>22</sup> Undoubtedly, the description in chapter iii of the malorganization of the state governments indicates that there was genuine opportunity for saving money by a better administrative system. To this extent, the complaints against expenditures had a justifiable foundation. But were adequate services being offered? What about the overcrowded hospitals?

Indeed, there are many references in the state reports to deficiencies in service. It is constantly repeated from state to state that laws were being improperly administered because the legislature had not appropriated enough funds. New York, for instance, in 1915 had two agencies dealing with labor. One, the labor department, had just been reconstituted by statute; it had a staff of 391 whose salaries amounted to almost \$600,000 per annum. The other was a recently created workmen's compensation commission, whose staff of 337 received annual salaries of over \$500,000. In addition to the salaries, the two agencies spent half a million dollars a year. "Yet neither of these departments, and least of all the labor department, is able to perform the work contemplated in the laws it is called upon to enforce."<sup>23</sup>

In Virginia there was similar inadequacy in the social welfare institutions. The report prepared in 1927 by the New York Bureau of Municipal Research stated that the common-

<sup>22</sup> H. W. Dodds, "Taxes and the Short Ballot," *National Municipal Review*, X (March, 1921), 147.

<sup>23</sup> *Appraisals of the Constitution and Government of New York, 1915* (New York: Bureau of Municipal Research, 1915), pp. 168-69.

wealth had laws which read admirably on paper. But, they were above criticism only if "read without reference to the administrative organization for making them effective."<sup>24</sup> The chief defect was due to the financial policy which aimed to make each institution a self-supporting unit. Hence a competitive spirit among the authorities of the institutions, who developed the properties for revenue purposes, subordinating to this the care of their inmates. Because of the attention paid to extending farm operations, the professional staff needed for the patients was reduced to insignificant proportions. The idea that "the institution should serve the patient" was "subordinated to the idea of making the patient serve the institution."<sup>25</sup>

Two views expressed in Virginia will bring out clearly the conflict of attitudes. The New York bureau's report commented on the inadequacy of the inspectional work in the department of agriculture:

It is understood that the food inspectors, of which there are eight full-time and one part-time, are selected largely for political reasons and are very poorly equipped for the work. They are generally regarded as being lax in enforcing the food and sanitary regulations, notably in some of the cities where the municipal inspection is of a much higher grade than the State inspection.<sup>26</sup>

This judgment, be it remembered, is that of disinterested outside experts. Compare with it a sentence of the report published a few months later by the Citizens Committee, composed of Virginian businessmen. They recommended that such food inspection as was then being performed by the department of health should be consolidated with the inspection work of the agriculture department. "It should be expressly provided, however, that the total cost of all inspection work to be carried on by the Departments of Health and Agriculture shall not exceed the present expenditures for such inspection work."<sup>27</sup> A

<sup>24</sup> *Report on the Organization and Management of the State Government, 1927* (prepared by the New York Bureau of Municipal Research [Richmond: D. Bottom, 1927]), p. 131.

<sup>25</sup> *Ibid.*, pp. 131 ff.

<sup>26</sup> *Ibid.*, p. 73.

<sup>27</sup> *Report of the Citizens Committee on Consolidation and Simplification*, p. 13.

significant contrast! The one report, prepared by an outstanding research institute, represents the inspectional work as inadequate. The other, prepared by those who paid most of the taxes, wanted it to be "expressly provided" that no more money should be spent on inspecting. What did these Virginians want—efficiency in the sense of adequate service, or economy in the sense of reduced expenditures?

That the conflict was realized in Illinois is seen in a statement with which Dr. W. F. Dodd opened his section on labor in the report of the 1915 commission. He brings out the distinction with great clarity:

The field of labor legislation is one in which primary emphasis must be placed upon efficiency rather than upon economy. With the expenditure of funds now appropriated to the various labor bureaus in Illinois a much more effective administration can be had, but in order to enforce the present body of labor legislation in an effective manner it is probable that more money will have to be spent than at present.<sup>28</sup>

The evidence shows that both interpretations of economy and efficiency could be, and were, adopted. Undoubtedly, it was true that the state governments were badly organized and could save money on administrative expenses. But this saving alone, without any increase in total, could not hope to secure expanded services. The claim that expenditures be kept at the existing level ignored services and gave primary consideration to taxes. The very fact that the aims of the movement were differently interpreted should give pause to those who seek consistency in the final results. Responsibility, as was seen, might conflict with efficiency, whilst efficiency and economy could take on contrasted meanings according to the interests of the advocates. Furthermore, the reorganization movement proceeded independently from state to state at various times and was modified to suit local exigencies. One must expect to find not a logically coherent scheme perfectly applied but a patchwork threaded with compromise and conflict.

<sup>28</sup> *Report of the Efficiency and Economy Committee, 1915* (Chicago: Windermere Press, 1915), p. 491.

## CHAPTER VI

### ACHIEVING REORGANIZATION

IT WAS Burke who admonished the enthusiasts of the French Revolution that principles cannot be carried as far in practice as they can in logic. The argument of the last chapter indicated that the aims of reorganization would be inconsistent if each were developed to its logical conclusion. Thus, even in logic the principles had to be compromised in order to be harmonized. A priori, a much greater degree of compromise would be necessary to apply them in practice. The movement to achieve reorganization was bound to be the resultant of conflicting pressures, since different groups stressed varying objectives. To gain their support, concessions to special interests were unavoidable. The final product would, perhaps, be caused as much by the tactical maneuvers of day-to-day politics as by the influence of the original plan.

In achieving reorganization four stages can be distinguished, although they do not follow one another in clear-cut chronological sequence. First, there is the investigating stage. One or more commissions are appointed to study the actual facts and present a report of their findings. This is followed by the campaign stage. The report must be publicized; it must be seen as an issue; propaganda must be dispersed from the platform and the press. The legislative stage is third. A bill is drawn up embodying the aims of reorganization. It is presented to the legislature, and the struggle is then carried on in committee hearings and debates on the floor. Finally, once the bill is passed, there is the executive stage. The provisions of the law are put into actual operation. Reorganization becomes an accomplished fact.

Interestingly enough, the immediate impetus for the first stage came from the federal government. President Taft asked

Congress to appropriate \$100,000 "to enable the President to inquire into the methods of transacting the public business—and to recommend to Congress such legislation as may be necessary to carry into effect changes found to be desirable that cannot be accomplished by executive action alone." Congress granted the money, and in 1910 the President appointed his Commission on Economy and Efficiency. It made investigations from 1910 to 1913 and submitted a series of reports, of which the most famous dealt with the establishment of a national budget. The recommendations received scant support from Congress. The split had developed in the Republican party, and the President had lost his influence over the legislative branch. The proposals were "pigeonholed."<sup>1</sup>

But the reports had received wide publicity, for they revealed a deplorably bad organization of the national government. Those who had intimate knowledge of the states knew well that, however bad the national government, the organization of the state executive branches was far worse. Accordingly, there developed a movement to institute similar investigations of the states. The first to set up such a commission was Wisconsin, whose Board of Public Affairs was created in 1911. Between that year and 1917 sixteen similar bodies were authorized, and the movement continued unabated into the third decade of the century. A description of what happened in a few states will illustrate the different stages and reveal the difficulties that were encountered.

#### ILLINOIS

The contribution of Illinois to the movement is noteworthy because of two features. It was the first state of the Union to reorganize, and the reorganization was accomplished with remarkable rapidity. Only four years elapsed between the appointment of an investigating committee and the enacting of the "Civil Administrative Code." On Governor Dunne's rec-

<sup>1</sup> Frederic A. Cleveland and Arthur E. Buck, *The Budget and Responsible Government* (New York: Macmillan Co., 1920), pp. 77 ff.



ommendation the legislature in 1913 authorized a commission on efficiency and economy, composed of four members from each house. Its study was to be conducted "with a view of securing a more perfect system of accounting, combining and centralizing the duties of the various departments, abolishing such as are useless and securing for the State of Illinois such reorganization that will promote greater efficiency and economy in her various branches of government."<sup>2</sup> Employing Professor Fairlie, of the University of Illinois, to direct the research, the committee issued a preliminary report in 1914 and a general one in 1915. It proposed to consolidate the administrative agencies into ten departments—finance, charities and corrections, education, public works and buildings, agriculture, public health, labor and mining, trade and commerce, law, and military affairs. Of these, only agriculture, public health, labor and mining, and military affairs were to be under single heads appointed by the governor. The department of law was to remain under the elective attorney-general, and the other departments were to be administered by commissions. Some bills incorporating these recommendations were introduced into the 1915 legislature; but only one, relating to printing contracts, was passed.

Next year, however, the campaign for the governorship brought reorganization into the limelight. The leading Republican candidates in the primary election were Frank O. Lowden and Morton D. Hull. To the latter, who had a record of several years' experience in the state legislature, belongs the main credit for making reorganization an issue.<sup>3</sup> Hull had shown interest in this subject even prior to the efficiency and economy report. He had supported a bill which consolidated into one the separate boards that administered the charitable institutions. He now came out strongly for reorganization, brought the problem

<sup>2</sup> Senate Joint Resolution, No. 22.

<sup>3</sup> See the biography of Hull by Professor Marshall E. Dimock (soon to be published). The writer wishes to express his thanks for being allowed to use some of the material collected for this biography.

to the foreground of attention, and virtually forced it on his rival. In a statement to the *Chicago Daily News* Hull said:

One big series of constructive measures to be put through is the bills to reduce the cost of government to the taxpayers, by consolidating overlapping boards and commissions. These are the proposals of the Economy and Efficiency commission. As a legislator at Springfield I helped in the creation of that commission, on which Logan Hay of Springfield, now secretary of my campaign committee, was a leading member.<sup>4</sup>

The result of the primary was a victory for Lowden, who received 227,443 votes against Hull's 117,229.

In the campaign for the actual election that followed, reorganization was completely indorsed by Lowden. His Democratic opponent, Governor Dunne, also favored it. He had himself recommended appointing the commission. However, it cannot be said that this issue dominated the minds of the voters. This election of 1916 coincided with a presidential election, and it was the war problem and the conflict between Wilson and Hughes which absorbed popular interest. The *Chicago Tribune* carried only one editorial on the gubernatorial election:

The Tribune believes that either candidate would make a pretty good Governor. . . . In general, those who want more popular control (with lots of referendums, etc.) in our State government than we already have would better vote for Dunne, while those who lean to a less popular (or demagogic) but more efficient government would better vote for Lowden. Illinois won't go to the demnition bow-wows under either gentleman.<sup>5</sup>

The result was a success for Lowden. He had 569,060 votes, and Dunne 457,445.

As early as November 11 it was announced that Lowden was discussing a reorganization bill with his advisers. In December the features of the bill, which was to be "the dominant issue in the pending general assembly,"<sup>6</sup> were made known. They followed the main plan of the efficiency and economy report, but in detail there were important changes. Lowden stated that "the specific form of organization recommended by the

<sup>4</sup> September 9, 1916.

<sup>5</sup> November 2, 1916.

<sup>6</sup> *Chicago Tribune*, December 12, 1916.

Committee was, after mature deliberation, rejected as not conducive to either strength, harmony or unity of administration." The report had suggested ten departments, of which five were under boards. Lowden proposed nine—finance, agriculture, labor, mines and minerals, public works, public welfare, public health, trade and commerce, registration and education—each under a single head. But, in addition, there would be the constitutional elective officers. The governor recommended this consolidation and the executive budget in his inaugural. He then submitted his bill, the Civil Administrative Code, to the legislature and helped it on its way during the first few months of the session.<sup>7</sup> On February 15 the house passed it by 143 to 2. Six days later the senate, which had made a few amendments to the house bill, passed the amended bill unanimously. A conference committee then discussed the amendments, which concerned salaries, and reached a compromise on March 1. It was immediately accepted by both houses.

This law, be it noticed, affected only the administrative agencies which had been set up by statute. It did not affect the elective officers. Lowden, however, favored the short ballot and was willing to have it incorporated in the constitution. A constitutional convention was held in 1920. Hull, who was one of the delegates, proposed the short ballot; but it was voted down. This constitution was never ratified. There had been a bitter split in the convention over the representation to be allowed to Cook County in the legislature. The Cook County delegates were outnumbered and could not carry the day. But, when the constitution was submitted to the people, it was heavily rejected in the Chicago area. The failure to shorten the ballot marked the end of the movement to reorganize the executive branch in Illinois.

#### MASSACHUSETTS

A contrasting picture is provided by Massachusetts, a reorganization which is interesting in many respects. A striking

<sup>7</sup> See p. 106 below.

complaint about the chaotic condition of the executive branch came at a very early date. Governor Russell in 1892 sent an excellent message to the legislature in which he inveighed against the multiplication of agencies and deplored the powerlessness of the governor. Twenty years elapsed before his complaints were acted upon. In 1912 the legislature created a commission on economy and efficiency. "It shall be the duty of the commission to inquire into the laws governing the financial transactions of the commonwealth and to study into the possibility of promoting greater economy and efficiency and utility in the transaction of the business of the commonwealth."<sup>8</sup> The commission published its annual reports until 1915, but they were not comparable in scope or thoroughness to the surveys made in other states. In 1916 the legislature abolished it and transferred its functions to a newly established supervisor of administration. This officer in his first report states that "the office of Supervisor of Administration is a staff agency for exercising supervision over certain activities of State departments, and for conducting investigations and studies into the organization and business methods of the State government."<sup>9</sup> The following year the general court evinced its interest by setting up a joint special committee on finances and budget procedure. The committee was empowered to "investigate and consider the matter of the consolidation and abolition of commissions."

Before its report could be presented, Massachusetts had taken a great forward step on the road to reorganization. In 1918 a constitutional convention was held, and the topic of reorganization received ample notice. Of various proposals submitted by the Committee on the Executive, two were adopted by the convention and ratified by the people. The governor's term was lengthened from one year to two, and he was given

<sup>8</sup> *Report of the Commission on Economy and Efficiency, 1912* (Boston: Wright & Potter Printing Co., 1913), p. 8.

<sup>9</sup> *Report of the Supervisor of Administration, 1916* (Boston: Wright & Potter Printing Co., 1917), p. 5.

the power to return bills to the legislature with suggestions of changes. Another committee, on the administration of the state's business, introduced an amendment to consolidate administrative agencies into not less than seven and not more than fifteen departments. Those which had quasi-judicial functions were to be placed under commissions, and all the others under single heads. After a stimulating debate<sup>10</sup> an amendment was finally adopted by the convention, which read:

On or before January first, nineteen hundred and twenty-one, the executive and administrative work of the Commonwealth shall be organized in not more than twenty departments, in one of which every executive and administrative office, board and commission, except those officers serving directly under the Governor or the Council, shall be placed. Such departments shall be under such supervision and regulation as the General Court may from time to time prescribe by law.

The people ratified this in 1918 by the wide margin of 158,394 to 81,586. The proposers of the amendment were credited with the wisdom of not specifying which existing agencies were to be abolished and what new departments were to be created. Reorganization was discussed on its merits, and the opposition of office-holders was avoided. It was only after the amendment had been carried and definite proposals were made, that this type of opposition became articulate.

In the legislative stage the general court was aided by two reports submitted in 1919. One of these, prepared by the Committee on Finances and Budget Procedure, analyzed the confusion that prevailed among the administrative agencies. The other report was drawn up by the supervisor of administration. It proposed a plan of reorganization into nineteen departments and embodied this in a bill. The general court acted favorably and adopted an "Administrative Consolidation Act" which took effect on December 1, 1919. This failed, however, to give complete satisfaction, and Governor Cox proposed in his message of 1921 that there be a further investigation of the execu-

<sup>10</sup> *Debates in the Massachusetts Constitutional Convention of 1917-8* (4 vols.; Boston: Wright & Potter Printing Co., 1918-20), III, 1023 ff.

tive branch. The legislature appointed a committee which reported in January, 1922. In accordance with its proposals the general court made an important modification of the structure authorized in 1919, creating a commission on administration and finance.<sup>11</sup> With this addition, the main lines of the Massachusetts reorganization were complete.

#### VIRGINIA

The history of the Virginian reorganization begins in 1916, when the general assembly set up a commission on economy and efficiency. The report, submitted in 1918, stressed the principal defects to be the utter lack of systematic plan in the executive branch, inadequacy of the governor's powers to supervise the administration of the law, and the absence of a budget system and of an independent audit.<sup>12</sup> It pointed out that many of the desired remedies could be achieved only by constitutional amendment. A budget, however, could be instituted by statute. The legislature acted upon this suggestion, which had Governor Davis' support, and the law requiring a biennial budget was adopted in 1918. The next step came in 1922, when the general assembly established a commission on simplification and economy of state and local government. It was ordered to divide its recommendations into two groups—those which could be effected without amendments and those which were "conditioned upon necessary constitutional changes."<sup>13</sup> It presented its report in 1924 and summarized existing defects as "lack of correlation of work, lack of harmonious legislative policy, ineffective supervision and administrative control, extensive duplication of work, and diffused governmental responsibility."<sup>14</sup> However, it felt that "in the long run better results could probably be obtained through

<sup>11</sup> See next chapter for full discussion.

<sup>12</sup> *Report of the Commission on Economy and Efficiency, 1918* (Richmond: Richmond Press, Inc., 1918), pp. 24-25, 34-35, 39.

<sup>13</sup> *Report of the Commission on Simplification and Economy, 1924* (Richmond: D. Bottom, 1924), p. 9.

<sup>14</sup> *Ibid.*, pp. 24-25.

gradual consolidation and elimination of unnecessary functions than through sudden and sweeping change."<sup>15</sup> It proposed, accordingly, that the state government be organized into twelve departments—state, finance, education, public welfare, public health, agriculture, corporations, labor and industry, highways, conservation, law, and military affairs. The legislature took no action, and the initiative had to come from elsewhere.

The following year Harry F. Byrd, a state senator, became candidate for the governorship. The movement for reorganization now entered the campaign stage. Byrd made a vigorous plea for general reform in government. A major proposal was to reorganize the administration. Elected to the governor's office, he delivered his inaugural address on February 1, 1926. The keynotes were tax reform and the need for efficient administration under the supervision of a responsible chief executive. The governor should be "the real head of the executive branch of the government."<sup>16</sup> Two days later, Governor Byrd sent a message to the general assembly. He reiterated the need for reorganization and made the specific proposals:

(1) That the General Assembly submit constitutional amendments to popular vote so that Virginia can adopt the short ballot and elect by direct popular vote only the Governor, the Lieutenant-Governor, and the Attorney-General.

(2) That the administrative heads of departments be appointed by the Governor, who is directly responsible to the people for administrative efficiency.

(3) That the bureaus, boards, and commissions, be grouped in eight or ten departments, that many be abolished, and a business-survey be conducted to make clear the way to economies.

The legislature followed the governor's lead. It appropriated \$25,000 for the employment of experts to study the state administration and adopted a joint resolution that a short-ballot amendment be submitted to the people. Governor Byrd employed the New York Bureau of Municipal Research. Its report, submitted in January, 1927, is one of the outstanding sur-

<sup>15</sup> *Ibid.*, p. 23.

<sup>16</sup> Governor Byrd, *Inaugural Address, February 1, 1926* (Senate Doc. No. 6).

veys of a state administration. Twelve departments were proposed. Each was to have a single administrative head, with whom, in seven departments, would be associated a board for policy-making.

The governor placed this report in the hands of a "Citizens Committee on Consolidation and Simplification in State and Local Governments." It was a "commission composed of outstanding business men of Virginia," thirty-eight in number. Mr. William T. Reed, a wealthy tobacco manufacturer and political supporter of Governor Byrd, was named chairman. The committee considered the New York bureau's recommendations and drew up its own report. The principal changes which it introduced into the bureau's proposals were: (1) to place the Department of Industrial Relations under the existing *Industrial Commission* instead of under the commissioner of labor, (2) to dispense with a director of finance and leave the department headless, (3) to make the Department of Conservation and Development a bundle of three co-ordinate commissions. These changes for the worse were indorsed by Governor Byrd, who called a special session in March, 1927. The legislative stage was easy and uneventful. A bill embodying the Reed proposals passed both houses unanimously. A resolution to submit constitutional amendments to the people was also adopted and was again accepted by the 1928 session. In June, 1928, the people ratified amendments under which the legislature was permitted to make the treasurer, the superintendent of public instruction, and the commissioner of agriculture and immigration, appointive officials. The short ballot, added to the reorganization act and to the executive budget, marked the successful completion of Governor Byrd's efforts.

#### NEW YORK

New York is the great classic of the reorganization movement. Even if all groups in the community had been united in favor of reorganization, it would still have been a tremendous task to infuse order and system into the government of the most populous state of the Union. When political warfare was



added to the other difficulties, the task assumed herculean proportions. In its campaign and legislative stages the struggle lasted more than a decade and was a major issue at no less than five elections. It became a bitter party conflict between Republicans and Democrats. It involved an attack on the system of "invisible" government by irresponsible bosses. It focused around the picturesque personality of Al Smith and earned him the reputation which helped him secure the Democratic nomination for the presidency in 1928. The public became concerned to a degree far greater than elsewhere. In the press, over the radio, and from the platform, the average citizen had his attention drawn to the problems of organizing a state government and administering it.

The general purposes of the reorganizers were the same as elsewhere. They aimed at the short ballot, executive budget, and administrative consolidation. Each required an amendment to the constitution. The struggle began in 1910. Governor Hughes recommended the short ballot and consolidation in his annual message. This would "tend to promote efficiency in public office by increasing the effectiveness of the voter and by diminishing the opportunities of the political manipulators who take advantage of the multiplicity of elective offices to perfect their schemes at the public expense." To this invitation the legislature did not respond. A resolution was introduced, proposing a constitutional amendment that all state officers except the governor and lieutenant-governor be appointed. But it met defeat. Governor Hughes did, however, secure two laws which offered a faint—a very faint—hope for the future. One law enacted that all requests for appropriations were to be filed with the comptroller and tabulated by him prior to the session for the use of the governor and legislature. The other, the Moreland Act, gave the governor power to conduct an investigation of any department in the executive branch. The fact that hitherto there had been no power to perform these functions is a plain confession of the deplorable condition that prevailed.

The issue was revived in the campaign of 1912. Both the

Republican and the Progressive conventions announced their support of the short ballot. The split in the Republican party enabled the Democrats to capture the governorship and both houses of the legislature. Governor Sulzer in 1913 appointed a committee under the Moreland Act to investigate departmental organization. It recommended the creation of (1) a state board of estimate, which was to prepare the appropriation bills, and (2) a department of efficiency and economy under a commissioner appointed for five years by the governor with the senate's consent. The legislature acted favorably. Al Smith was speaker of the assembly and helped the passage of the bills. All spending agencies were to file with the commissioner of efficiency and economy detailed statements of the appropriations they desired. The commissioner could recommend changes as he saw fit. The Board of Estimate, whose members served *ex officio*, examined these requests and prepared a budget for the legislature. Two years later both agencies were abolished. The lack of co-operation between executive and legislature made it impossible for them to succeed. In 1914 the Republicans introduced a new short-ballot resolution into the assembly, favoring the election of only the governor and the lieutenant-governor. It passed the assembly, but never came to a vote in the senate. That year the platforms of both the Republican and the Democratic parties approved administrative consolidation and the short ballot. The only difference was that the Democrats, at Al Smith's suggestion, wanted the comptroller and the attorney-general as well as the governor and lieutenant-governor to be elected.

The following year a constitutional convention was held. The preparatory groundwork was carefully laid. The New York Bureau of Municipal Research co-operated with the then existing Department of Efficiency and Economy and wrote a report on "The Government of the State of New York." Later, at the request of the Constitutional Convention Commission, it prepared an appraisal of the organization of the state government. At the convention the "committee on the Governor and

other State officers" proposed an amendment which they submitted to the convention in August. There were to be fifteen administrative departments and four elective officers. The department of justice would function under the attorney-general, the department of audit and control under the comptroller. Commissions would head the departments of education, public utilities, conservation, and civil service. The remaining departments<sup>17</sup> were to have single heads appointed by the governor. A plan of seventeen departments was finally adopted. The department of taxation and finance, previously proposed, was to be split into the three departments of accounts, treasury, and taxation. The comptroller's department was to be called "department of finance." Other changes in the committee's proposals were only slight. In the final vote the convention (with its overwhelming Republican majority) adopted the amendment providing for short ballot and consolidation by 124 to 30.<sup>18</sup> The convention accepted thirty-three amendments all told, and the final draft of the new constitution was carried by 118 to 33. It was submitted to the people, but its sponsors made the fatal mistake of letting the electorate vote on it in its entirety. The result was that many who opposed specific provisions voted negatively on the whole document. Al Smith himself, despite his approval of reorganization, opposed the document because of a section which would have apportioned senators and assemblymen to the disadvantage of New York City.<sup>19</sup> There was a large and highly inharmonious opposition consisting of the labor unions, the Progressives, Tammany, real estate owners, the New York City schoolteachers, and upstate Republican leaders. Of course, only a particle of this opposition centered on reorganization. Upstate Republicans dis-

<sup>17</sup> Taxation and finance, public works, state, health, agriculture, charities and corrections, banking, insurance, labor and industries.

<sup>18</sup> *Record of the New York Constitutional Convention of 1915: Unrevised* (4 vols.; Albany: J. B. Lyon & Co., 1915), IV, 3959.

<sup>19</sup> Alfred E. Smith, *Up to Now: An Autobiography* (New York: Viking Press, 1929), pp. 145-47.

liked the strengthening of a (potentially Democratic) governor. Job-holders feared the abolition of their own posts. The enumeration of specific new departments had been avoided in the broadly phrased Massachusetts amendment. In New York, however, it was deemed necessary to name the departments in the amendment as a check on the hostile legislative leaders. The combined opposition sufficed to defeat the document.

Notwithstanding, Governor Whitman decided that the executive budget, at least, could be instituted without constitutional, or even statutory, provision. He requested spending agencies to send him their estimates and, in November, 1915, appointed a committee of executive officers to revise them. He submitted a budget to the 1916 legislature, sending with it a tentative appropriation bill. The bill was composed of lump-sum items, but details were appended to each item making up a schedule that would bind the department head. The legislature was to authorize the lump sums. The governor would thus supervise their spending in detail. A fond illusion! The legislature regarded this budget as nothing less than usurpation of its prerogatives. It amended the bill by changing a few words, so that each of the appended details became a separate item authorized by law. The appropriation act was as inflexible as possible. The governor, not noticing the alteration, gave his assent. The legislature decided to drive home its authority still farther, and instituted a legislative budget by the Sage-Maier bill. The budget would be prepared by the senate finance committee and the assembly ways and means committee. The governor was to submit "a statement of the total amount of the appropriations" desired by each agency, and he might "at the same time make suggestions for reductions or additions thereto." But these suggestions were merely advisory. Equally advisory in character were the estimates which the comptroller continued to send in under the law of 1910. It was the legislature—in practice, the chairmen of the two committees—who had most to say. The law led to conflict and to the temporary triumph of the legislature. In 1917 the Governor vetoed

the legislative appropriations. They were repassed over his veto. A 1919 report declares:

Since the passage of the Sage-Maier bill there has been a notorious lack of co-operation between the Governor and the Legislature on financial matters. Before the end of his first term Governor Whitman abandoned the leadership which he assumed in budgetary matters at the opening of his administration and left the legislature in full possession of the field.<sup>20</sup>

The leadership abandoned by Governor Whitman was resumed by Al Smith, who became governor in 1919. The regular Democratic organization, including Tammany, supported his election. So did two independent groups—a Young Democratic club and a citizens committee composed of independents of all parties. Though opposed in the rural sections which traditionally vote Republican, his strength in New York City gave him the victory by the small majority of fifteen thousand. In January, 1919, he appointed a reconstruction commission of thirty-five members.<sup>21</sup> With the aid of the New York bureau the commission published in October, 1919, its excellent report on retrenchment and organization in the state government. In preparing it the staff read through Smith's previous utterances in order to bring their recommendations in line with his views. This was not difficult, as he had consistently favored reorganization. The proposals of the report were soundly based on a discussion of principles of organization and administration. Perhaps its single best quality is the clear theoretical distinction between the functions of staff and line officials. This theory was incorporated into the actual plan. A bureau of administration directly under the governor was to be invested with the tasks of preparing the budget, investigating departmental work, formulating pension schemes, and devising a classification system. The reorganization provided for seventeen departments as had been previously suggested.

The Republican majorities in both houses of the legislature

<sup>20</sup> *Report of the Reconstruction Commission of New York State, 1919* (Albany: J. B. Lyon & Co., 1919), p. 315.

<sup>21</sup> Smith, *op. cit.*, pp. 170 and 187.

had been hostile to the commission from its inception. Regarding it as a "rump legislature," which was trying to duplicate their lawmaking functions, they would not grant an appropriation for its expenses. When constitutional amendments to reorganize the government on the lines of the commission's proposals were introduced, the legislature at first fought shy of them. But Governor Smith was stirring up opinion by vigorous speeches, and, as a concession, the legislature adopted a resolution to consolidate administrative agencies by an amendment. It would not, however, approve the executive budget or the four-year term for the governor. The year 1920 brought with it a gubernatorial election. National issues overshadowed state problems, and in the Republican landslide Smith was defeated. He complains that his opponent failed to argue the reorganization issue and concentrated on "Article X of the Covenant of the League, and the threat of some of the interior States to force through the canalization of the St. Lawrence River."<sup>22</sup> President Harding carried the state by a plurality of over 1,088,000. But the fact that Governor Miller beat Smith by only 75,000 is a clear indication of Smith's personal popularity.

For the next two years reorganization hung fire. Governor Miller did not desire to indorse reorganization, despite its having once been sponsored by the Republicans. The New York constitution requires that before amendments are submitted to the people they must be passed by two sessions of the legislature not having the same senate. So the resolution proposing a consolidation amendment, which had been passed in 1920, was reintroduced in 1921. Likewise, the proposals for the executive budget and the four-year term were brought before the legislature. Speaker Machold opposed consolidation in the house, and this time it was voted down. The other two amendments did not even come to the vote. Miller approved their defeat, since he believed that reorganization could be effected by statute. Certain minor consolidations were, indeed, carried

<sup>22</sup> *Ibid.*, p. 220.

out. At the same time appropriations were decreased by \$20,000,000. According to Al Smith, this "return to normalcy" was achieved as follows: (1) the appropriation for the department of labor was so slashed that three bureaus (inspection of factories, workmen's compensation, and women in industry) could not function; (2) no appropriation was made to grant indemnities for tubercular cattle slaughtered by the state; and (3) the appropriation for the care of the insane in state hospitals was reduced to a niggardly figure.

The Republican interlude was brief. Smith ran for governor in 1922 and revenged himself on Miller by a majority of 387,000. But the assembly was Republican, and the senate had a bare Democratic majority of one. The 1923 senate accepted the consolidation amendment, and the assembly passed it with minor changes. The Republicans were hoping that Smith would not be re-elected in 1924. Then they would not have to repass the amendment. But Smith was a disconcerting opponent. Although this was the year of a presidential election, in which the Republican landslide swept New York State by over 850,000, nevertheless Smith won his governorship by 108,000. Although both houses were Republican this time, they had to obey the mandate of the people. The 1925 legislature accepted the amendment embodying a short ballot and consolidation. The state government was to have a maximum of twenty departments,<sup>23</sup> and no new ones were to be created by legislative act. The people ratified this in November, 1925.

The next task was to revise the statutes and assign existing agencies to the appropriate departments. Smith recommended that a joint commission be appointed with members nominated both by the governor and by the legislature. This body was to prepare a program for the 1926 session. But the legislature did not want any gubernatorial appointees. It waited until ad-

<sup>23</sup> Executive, audit and control, taxation and finance, law, state, public works, architecture, conservation, agriculture and markets, labor, education, health, mental hygiene, charities, correction, public service, banking, insurance, civil service, military affairs.

jourment, and then the leaders set up their own committee without legal authorization and without appropriation. Smith realized that his whole objective might fail unless he had some members on the committee. He made protests in speeches and in statements to the press, and the legislative leaders were forced to allow him to submit a list of names from which they selected fifteen. Among these were Hughes, Wickersham, Moses, and Childs. The Republican bosses then tried to control the committee by having one of their men for chairman. The favored person was former Speaker Machold, the persistent foe of reorganization. They asked the members they had appointed to choose him as chairman. Smith forestalled the move by securing Hughes's consent to be nominated for the post. He suggested to Childs that he circularize all committee members and propose Hughes's name. Concurrently, he advocated this in the press. Of course, the Republican leaders could not oppose the prestige of the former governor of New York, the former justice of the Supreme Court, and the former presidential candidate of the Republican party. Hughes became chairman and saw to it that the chairmen of the subcommittees were responsible persons. He decided that his committee would not merely make general recommendations but would actually draft a bill. Thus would he prevent the legislature from evading his suggestions. The legislative counsel came down from Albany to New York City, and the bill was drawn up. It followed the lines of the amendment but reduced the number of departments to eighteen by eliminating architecture and military affairs.

The bill had Hughes's prestige behind it. The committee had been bipartisan—and the governor was waiting to pounce on any attempts to wreck the scheme. The legislature could no longer hold out. But there was yet one more attempt to foil the governor. Although the consolidations could have been completed by July 1, 1926 (the beginning of the fiscal year), the act was made effective on January 1, 1927. The Republicans still hoped that they could secure the governorship in



1926. They would then be able to put through the reorganization themselves, and could make the appointments to the new positions. Again they failed. Smith beat his opponent, Congressman Ogden L. Mills, by the margin of 257,000. Reorganization was saved.

In 1927 came another success. The executive budget received final ratification. An amendment had passed the senate in 1923, but was defeated in the assembly. In 1924 and 1925 it was lost in both houses. However, the Hughes committee recommended its adoption, and the 1926 legislature accepted. The next year, the governor urged that it be repassed. His wish was followed, and the people approved. Another amendment submitted to popular vote at the same time contained the proposal to extend the governor's term to four years coincident with the president's term. This suggestion did not entirely accord with Smith's views. He favored having the quadrennial election of the governor in the even-numbered years that did not correspond with the year of the presidential election. He wanted a state election to be concerned with state affairs. Smith's only defeat, that of 1920, had shown him the folly of allowing national issues to be obtruded into a gubernatorial campaign. Although he favored the four-year term, he opposed the amendment because of his objection to the other feature. It was defeated.<sup>24</sup> The year 1927 capped the long struggle. The will of the voters had overridden that of their elected representatives.

#### COMPARISONS

Comparisons are now in order. First, how important was the governor in achieving reorganization? A priori one would suppose that the governor had great influence. The object of the movement was to instil better principles of organization into his branch of the government. He knew existing defects at firsthand, and the proposed reforms would increase his power. There was every incentive for him to be a vigorous

<sup>24</sup> It was eventually adopted in 1937.

leader in the movement. To a large extent this a priori hypothesis is confirmed by the facts. In many states the governor exerted his influence, but not in all.

Massachusetts is the striking case of a state in which the governor was relatively indifferent. Governor McCall was the chief executive at the time of the constitutional convention. He had little interest in problems of administration and lent scarcely any help to those who favored reorganization. The proposed amendment was introduced on their own initiative by Professor A. B. Hart, of Harvard, and Mr. Charles P. Howard, a Harvard graduate. They discussed their proposal with President Lowell and Professor Holcombe before drafting it. At the convention a former governor, the Honorable David I. Walsh, spoke in its support. Members of the legislature were on the whole quite as favorable. Indeed, a chief characteristic of the Massachusetts reorganization is that it was a reorganization of the executive, for the executive, but not by the executive. Calvin Coolidge, who succeeded McCall as governor, gave his passive approval, but was not the energetic leader who pushed the passage of the "Administrative Consolidation Act." This absence of gubernatorial leadership in the Massachusetts reorganization may serve to explain some of its features. The important Commission on Administration and Finance<sup>25</sup> is not entirely under the governor's control and can, if necessary, check him in certain administrative acts. It is probable that a governor of the strong type would have opposed such a potential curb on his power.

In Illinois, however, the governor had influence. Why, it may be asked, did Lowden sponsor reorganization? The evidence of his career indicates that prior to his nomination for the governorship he had no experience in the state legislative or executive branch. He had, however, been in Congress at the time of President Taft's Efficiency and Economy Commission. Like many would-be governors he wanted an issue, and a rival provided it. Morton D. Hull, his primary opponent, actively

<sup>25</sup> See full discussion in next chapter.

indorsed reorganization, which appealed to Lowden. Himself a director of the Pullman Company, he liked the idea of putting "efficiency" and "business methods" into government. Once elected, he determined to make this a central point in his program for the legislature. The motives were doubtless mixed. He had to redeem his campaign promises. He had a desire to systematize the administration. Personal ambition, too, may have urged him to accomplish something which would redound to his greater glory.<sup>26</sup> Whatever the reason, it is true that he exerted all his influence, and capitalized on the prestige of a newly elected governor, to secure prompt action by the legislature. Thanks largely to his preparation of the bill prior to the session, and his advocating it during the session, the measure was adopted within two months by overwhelming votes.

Governor Byrd in Virginia had somewhat similar motives. Before his governorship the political leader of the state was Senator Swanson. The Senator, however, was growing old, and became more and more engrossed in national affairs. Hence, the actual conduct of state politics devolved on machine leaders such as Governors Davis and Trinkle. Byrd was a state senator and achieved prominence in a fight over highways. One group wanted to finance new construction by issuing bonds. Byrd preferred a "pay as you go" plan and proposed paying for the highways out of the proceeds of the gasoline tax. His victory in the primary election of 1925 (equivalent to a final election in the one-party state of Virginia) meant that a new faction had risen to power. Byrd did not owe allegiance to Swanson and determined to supplant him as political leader. Like Lowden he wanted an issue. Reorganization had been mooted for some eight years, and he seized on this as a good campaign cry. The prestige of reconstructing the state government would gain him leadership in state politics. Although under the Virginia constitution he could not succeed himself as governor, he could dominate the Democratic machine

<sup>26</sup> In 1920 he was a candidate for the Republican nomination to the presidency, and the reorganization was loudly advertised by his supporters.

through governors of his own choosing. The issue proved popular enough, and Byrd succeeded. He owed his success, as a state official told the writer, to his "remarkable finesse in handling men." Before sessions began, he would invite small groups of legislators to his home, discuss his plans, and win their approval. Then he would call the press, announce his intentions, and gain the desired publicity. The result may be seen in the fact that, of thirty-five recommendations made to the 1926 legislature, only five were defeated.<sup>27</sup> Governor Byrd did not slacken in his leadership. He actively promoted the short ballot, as well as the consolidation, and, when he left the governor's office, he had a successor favorable to his ideas.

In New York the governor's influence was just as striking and far more dramatic. It was the doggedness and energy of Governor Smith which finally carried the reorganization. The legislature throughout tried to block his efforts by obstruction and delay. The feature of special interest is that this battle between governor and legislature was fought on party lines. Electoral gerrymandering in New York constantly gives rise to the election of a Democratic governor and a Republican legislature. The situation was complicated, however, by defections in the Republican ranks. Actually, in New York reorganization was first sponsored by a Republican governor. Hughes advocated it in 1910, and it was reiterated in the party platforms until 1914. But Hughes belonged to the liberal wing of the Republican party. Although the legislature, during his tenure, was Republican, it opposed him on many issues—social legislation, control of insurance companies, and reorganization. He was supported by other Republicans of great integrity and national reputation. Both Root and Wickersham indorsed reorganization at the constitutional convention. The opposition within their own party came from the small politicians who controlled the machine. The fight of Hughes, of Root, and of

<sup>27</sup> George W. Spicer, "From Political Chief to Administrative Chief," *Essays on Governmental Administration*, eds. M. E. Dimock and C. G. Haines (Baltimore: Johns Hopkins Press, 1935), p. 99.

Wickersham was one act in the long drama of contests with boss rule in New York State. The small politicians thrive on the system of "invisible government." The men of mark wanted to strengthen the governor because they hoped thereby to weaken the bosses. Most governors of their experience had been under boss control. Even Theodore Roosevelt was not entirely independent of Platt.<sup>28</sup>

Further complication was added by the disharmony between the urban and rural sections of the state. Traditionally the city of New York, home of Tammany, is a Democratic fortress. But the small towns and the country areas in the north and west are faithful to the Republican allegiance. As the governor is elected from the whole state, the Democrats can win this office by means of their strength in the city. But the representation in the legislature is so apportioned as to discriminate against the city and favor the rural areas. It was from the latter region that the Republican bosses derived their votes. They did not want to strengthen the executive because the governor might be of the opposite party. Hostile to reorganization, even when proposed by Hughes, they intensified their hostility when it was espoused by Smith.

Smith had enjoyed a long and intimate experience in state affairs. He was a member of the assembly for twelve consecutive years, 1904-15, and in this period held the positions of majority leader, chairman of ways and means, and speaker. He dates his early interest in reorganization to 1911, when he co-operated with State Senator Wagner in introducing a bill to create a department of conservation. The Fish and Game Commission, Forest Preserve Board, and Water Supply Commission were all unified into this new agency. Smith became an ardent supporter of reorganization, favoring all three proposals of consolidation, executive budget, and short ballot, at the constitutional convention. From 1916 to 1918 he held posts in New York City as sheriff and president of the Board of Alder-

<sup>28</sup> Harold F. Gosnell, *Boss Platt and His New York Machine* (Chicago: University of Chicago Press, 1924).

men. The office of sheriff was his first executive experience. He says that he was glad to give it up for the position on the Board of Aldermen as the latter was a legislative task. His Albany career had made legislative work more to his liking at that time—though later, as governor, he revealed a fine flair for administration.

In 1918 he was nominated as Democratic candidate for governor, and won. He adopted the issue of reorganization in his campaign, probably from a combination of motives. In his membership on the ways and means committee he had an excellent opportunity to see how poorly the state was organized, and he had a genuine desire for good administration. Ambition was, no doubt, an additional factor. Smith had his eye set on the future, and reorganization was a good "stunt." Further, he was a keen party man, and strengthening the governor would help the Democrats. The phases of the long-drawn-out struggle have been described. Clearly, only a man of great tenacity would have kept up the conflict so long. To tenacity should be added the qualities of shrewdness and discernment. A sound insight into human nature in party politics enabled him to foresee and counter the tactics of his Republican opponents. Long acquaintance with local conditions, a good native intellect, likeable personality, and a sense of humor were further ingredients in his leadership.

Inevitably, in discussing New York the question of the influence of the governor has been merged with that of party conflict. It is natural to ask whether in other states there was a similar entanglement. In Illinois, Virginia, and Massachusetts the answer is definitely in the negative. In Virginia reorganization was, of course, the work of the Democratic party. In Massachusetts the Republicans were ascendant, and were not vigorously opposed by the Democrats on the reorganization issue. In Illinois, Governor Dunne, a Democrat, had recommended the appointing of the Efficiency and Economy Committee, whilst the actual reorganization was carried out by a Republican, Governor Lowden. While the bill was before the

legislature, there was some division on party lines in the committees. Thus, when the house committee reported out the bill, all the Republican members were ranged on one side, and all the Democrats on the other.<sup>29</sup> But when it came to a vote in the whole house and in the senate, there was an overwhelming majority from both parties. The *Chicago Daily News* comments: "This showing is considered remarkable since the Democrats joined with the Republicans for this bill revolutionizing State government and which is considered the most radical change in government in Illinois history."<sup>30</sup> The newspaper goes on to say that this is all the more surprising because, under the reorganization bill, the minority party would lose such patronage as it formerly had. Some Democrats, appointed under the previous administration, might lose their positions in the reorganization.

This patronage factor, always of importance for party politics, was undoubtedly an element in the opposition of the New York Republicans to Al Smith. If the governor—especially a Democratic governor—had the appointing power in his hands, the legislative leaders would lose their share of the spoils. That is why, even at the very end of the fight, the Republicans tried to win the 1926 election. The new appointments would be made by the governor in 1927. Interestingly enough, this same fear of losing patronage influenced some of the Democratic leaders. Abolishing commissions would mean a reduction in the number of positions to which the governor could appoint. Smith had to convince his own party that, though they might lose some patronage, they would win greater benefit from the kudos of achieving reorganization. It was, therefore, politically expedient to forego a modicum of plunder with a view to receiving more numerous votes.

Professor Harvey Walker asserts that the patronage motif was dominant with the Ohio reorganizers: "Those who were responsible for the adoption of reorganization in Ohio in 1921 under a Republican administration are quite frank in their

<sup>29</sup> *Chicago Tribune*, February 9, 1917.

<sup>30</sup> February 21, 1917.

statement that it was used as a means of ousting a large number of Democratic officeholders who had been appointed by two preceding administrations."<sup>31</sup> In Ohio, therefore, those who reorganized did so to secure the distribution of patronage. In New York those who opposed reorganization feared the loss of the power to distribute. In Illinois, Massachusetts, and Virginia there was no party conflict on this score.

Yet, there was in Illinois opposition of another sort in which the patronage question played a part. It was not the obstruction of a party which might lose the power to distribute jobs but of a group of individuals already possessing jobs which they wanted to retain. When Lowden came into office, he refused to make new appointments until the "Civil Administrative Code" had been passed. He was thus able to win the support of legislators who hoped to have a say in distributing new jobs, and of applicants who hoped to be appointed after the law was adopted. But, at the same time, he incurred the opposition of those already in possession. The bill was intended to abolish some three hundred positions, and the papers report that there was resistance on the part of the three hundred who held them.<sup>32</sup>

In Virginia, which has traditional security of tenure despite the absence of a civil service law, Governor Byrd made no attempt to use patronage. There was, however, discontent among the job-holders whose positions were going to be abolished. The same was true of Massachusetts, and the type of pressure is vividly described:

We have 125 commissions or boards . . . and whenever a Legislature tries to consolidate or abolish a commission all the boards and commissioners and chairmen and secretaries that we have come before a public hearing and say that that particular board or any particular board that is mentioned cannot be done away with. . . . In my own town there are three members of the boards in the State House. . . . They came to me [in 1909] and wanted to know if I wanted to put them out of a job. And

<sup>31</sup> Harvey Walker, *Public Administration in the United States* (New York: Farrar & Rinehart, 1937), pp. 88-89.

<sup>32</sup> *Chicago Tribune*, February 11, 1917.



that is the way it is all through the State. Every Representative is approached by some member of a board who lives in his town, and it is natural, it is human nature for each one of these members to say: "Well Mr. Jones (or Mr. Smith) I won't do anything to hurt your board."<sup>33</sup>

Another form of opposition which arose was similar, but sprang from slightly different aims. Some resented reorganization because it meant the loss of a position which gave them not their livelihood but power and prestige in the community. Although some members might be full-time salaried officers of the state, others were voluntarily giving their spare time and received only their expenses. In the latter case, many positions were filled by citizens of local influence who had a genuine interest in their work and liked the feeling of power. Especially those who had held long tenure resented the abolition of "their" board. Administrative efficiency might demand their consolidation into a department. But these board members were frequently persons of prominence. They had wealth, or social status, or party power. They could sway votes in their locality. In short, they had to be placated, and the plan of reorganization must be modified correspondingly.

Thus in Virginia the state penitentiary was left independent chiefly because the chairman of the Prison Board, who lived *in Byrd's home town of Winchester, had held office for many years and wanted to continue his work.* Similarly, the Western State Hospital was under a board whose elderly chairman, another resident of Winchester, had helped Byrd in his career. The same was true of other boards in Virginia. They were controlled by the "squirearchy," the landowners of great local power. Their wishes had to be humored. In New York, also, the various charitable institutions were under separate boards manned by prominent persons. Many of these board members were patrons of the State Charities Aid Association, a voluntary organization which conducts much private charity work. They were able to use the whole lobbying power of this institution against the abolition of boards. In Massachusetts there

<sup>33</sup> *Massachusetts Debates, 1917-8, III, 970-71.*

was a Free Public Library Board whose members, appointed by the governor, supervised the administration of public libraries throughout the state. The chairman was a lady of great wealth who devoted much time and money to the work. She wanted to retain her control, and, when reorganization was carried out, this board was continued. It was placed "in" the Department of Education, but the commissioner of education has little power over it. A parallel instance was the Board of Immigration and Americanization. This took care of the immigrants who landed in Boston, and attempted to teach them the duties of citizenship. The chairman was a lady who took charge of the work with great interest, contributing her own money if the appropriation was inadequate. Upon reorganization this board was placed "in" the Department of Education, but remained administratively independent.

A somewhat different set of motives prevailed in yet another type of opposition. Sometimes certain "interests" which were affected by the work of a particular agency did not want that agency consolidated with another which served different "interests." Virginia gives two sparkling examples of such opposition. The department of conservation and development, as proposed by the New York bureau, would have been a unified department. As actually created, it is a trinity of co-ordinate commissions which receive the courtesy title of "department." Byrd wanted to unite the Conservation Commission and the Commission on Game and Inland Fisheries. This was impossible. The latter body was set up in the interest of the "sportsmen" whose avocation was to hunt and fish. The commission conserved fish and game for their pleasure and was financed by licenses. The holders of licenses wanted all their fees to be devoted to the conserving of fish and game, and preferred an independent commission which they could control. They feared that, if this body were consolidated into a department of conservation, (1) they might not control it so easily and (2) their license fees would go into the general fund and might be spent in part for other state purposes than that of

conserving fish and game. Hence, the political necessity of conciliating these interests produced the administrative absurdity of a "department" headed by three independent commissions.

The other Virginian instance concerns the feud between capital and labor. Before reorganization there were three agencies to deal with labor problems, the Industrial Commission, the commissioner of labor, and the Board for Industrial Rehabilitation. The New York bureau proposed to consolidate them into a department of industrial relations under the commissioner. This did not please the vested interests. The then commissioner, a former trade-union official, had pronounced labor sympathies and administered his agency on labor's behalf. The Industrial Commission, however, favored the employers. It had three members, of whom one represented the employees, one the employers, and the other "the public." Actually, the third member used to side with the employers' representative in making the decisions of the commission. The employers did not want "their" Industrial Commission placed in a department under the unfriendly commissioner. On the contrary, they hoped to place the commissioner under the Industrial Commission, and this was proposed by the Reed committee. Byrd favored the scheme, but the commissioner of labor defeated it. Though he was not strong enough politically to have the Industrial Commission put under him, he could at least keep his department independent of the commission. Before the session he toured the state and visited members of the legislature. Thus he secured a majority in his favor, and his department remained separate from the commission.

Massachusetts went through a somewhat similar experience. The reorganizers hoped to consolidate the functions of agriculture and conservation into one department. The farmers did not object, for they were confident that the department would be administered in their interest. But there was protest from the other side, from the state forestry association, the commercial fishing interests, and the "sportsmen." Hence, two de-

partments were instituted. Identical opposition arose in connection with banking and insurance. For the regulation of these two activities one department was proposed. But the interests wanted separate agencies which might be controlled more easily. In the result, banking and insurance appear as a single department. But the union exists only on paper. Each function received its own commissioner.

New York provides some significant parallels. Here it was the urban-rural conflict and the geographical distribution of parties which affected the organization of certain departments. Public utility regulation in a state of such population and wealth is a gigantic task. There were two public service commissions which divided this duty, one having for its area New York City and Greater New York, the other the upstate region. The Reconstruction Commission pointed out the administrative defects of this dichotomy: (1) The commission whose area was the city could not regulate utilities in metropolitan districts elsewhere in the state. (2) It was better to have one authority for dealing with problems which were similar throughout the state. (3) The gas and electric utilities both in the city and upstate were controlled by the same interests, yet regulated by two agencies. It was found, however, impossible to consolidate the commissions, because

there is very strong feeling in New York City that the regulation of its utilities shall be in the hands of a local resident or residents. This sentiment would oppose a single commission with upstate members almost as much as a single commissioner from upstate. The sentiment outside of New York City against interference by a city resident in upstate affairs is not as strong but is not insignificant.<sup>34</sup>

In other words, the Democrats of the city did not want to be controlled by upstate Republicans, and vice versa. When reorganization was achieved in 1926, the "department" of public service was divided into two commissions.

This same geographical split affected the overhead organization of the department of agriculture and markets. Agriculture

<sup>34</sup> *Report of the Reconstruction Commission, 1919*, pp. 203-4.

was the livelihood of the upstate farmers who were Republican in politics. They were the clientele of the Council of Farms and Markets (as it was called prior to reorganization). They did not want this department to be under a single commissioner appointed by the governor. If a Democratic governor selected a man of his own party affiliation, they would be subject to the control of the opposing party. They intended that the department should always be in Republican hands, and the way to secure this was to have at its head a commission appointed by the legislature. Hence the report proposed retaining the existing Council of Farms and Markets. It admitted, however, that this was "*opposed to the principles of proper organization laid down in the introduction to this report.*" But, it was "not possible to make recommendations regarding the Council of Farms and Markets strictly upon the basis of logic and principle."<sup>35</sup> The reorganization of 1926 acquiesced in this concession to political necessity.

Similar difficulties were encountered when the reorganizers attempted to consolidate agencies with different professional affiliations. Although public health and social work are closely related activities, there is often jealousy and resentment between the two groups which perform them. Doctors are likely to look askance at the newer profession of social workers. A member of the staff of the New York bureau, who was connected with the surveys in New York and Virginia, told the writer that for both states he favored the merging of public health and social work into a single department. In Virginia he wanted to make the then existing department of public health a bureau in a new department of public welfare. But the commissioner of public health opposed. He had held office for long and felt it a demotion to become chief of a bureau after being department head. As he was powerful politically, concessions had to be made. Public health and public welfare were allotted separate departments. In New York the doctors put up similar opposition to the same proposal. They feared

<sup>35</sup> *Ibid.*, pp. 109-11.

that, if health were only one of the functions of a department, the department head might be a man more interested in social work than medicine. Hence, the need for a separate department under a man whose concern was for health alone. Illinois provides another example of professional jealousies. When the Civil Administrative Code was introduced into the legislature, it was intended to place the functions of the existing board of pharmacy in the department of public health. The druggists claimed that they ought to have a self-sustaining agency of their own. Their annual licenses paid the board's expenses and left a net income of some \$10,000 to the state. They did not want to be "placed under the direction of some doctor."<sup>36</sup>

"Efficiency and economy" was described in the last chapter as the catch-phrase of the movement. It was seen that the interpretations of the words might conflict. One interpretation could easily lend itself to a "big-business theory" of the reorganization movement. If the dominant aim was to be efficient, in the sense of eliminating wasteful administrative methods, and economical, in the sense of reducing the total amount expended, clearly one might expect big business to support it. Taxpayers were complaining of the rise of state expenditures and taxes. It was shrewdly remarked, apropos of the new income tax of 1919: "One of the possible benefits of an income tax will be the development among the citizens of the State generally of a more vital interest in state organization and expenditures."<sup>37</sup> To what extent, then, was reorganization the foster-child of the vested interests? Is an economic interpretation the correct one? Was the talk about principles of administration mere camouflage? The answer appears that in most states multiple goals were envisioned. Reorganization had many supporters besides big businessmen, and big businessmen themselves were actuated by "political" as well as "economic" reasons.

<sup>36</sup> *Chicago Tribune*, January 12, 1917.

<sup>37</sup> *Report of the Reconstruction Commission*, 1919, p. 3.

Virginia is a state which fits this theory well. The vested interests are largely the big landowners, who dominate the state. Allied with them are the manufacturers, for, although agriculture still comes first in the economy of the state, industries are growing in importance. Governor Byrd himself is a large-scale apple-grower, and William T. Reed, his political ally, was an important tobacco producer. Reed lent financial aid to Byrd's campaign, and so did the Virginia Manufacturers' Association. Byrd continually talks of the state government in terms of a business corporation. When nominated as the Democratic candidate for governor, he said: "I construe my election as a mandate to me as a business man to institute the best methods of efficiency and economy in State affairs, so that the people may obtain in the public service a dollar's value for every dollar spent."<sup>38</sup> He intends to secure a "business reorganization,"<sup>39</sup> so that Virginia may function "with the efficiency of a great business corporation."<sup>40</sup> He hopes to inculcate "business standards of economy and efficiency."<sup>41</sup> Of course, "we practical business men" are aware of the "historic glories of our State."<sup>42</sup> Nevertheless, "Virginia is a great business corporation."<sup>43</sup>

The big-business sympathies of Governor Byrd and the Reed committee have already been noticed in their attempts to put the Industrial Commission at the head of the new labor department. Byrd's social outlook is further revealed by his gratification that the proposed child-labor amendment "has received the rejection it deserves by the General Assembly," and by his desire to prevent negroes from exercising their constitutional privilege of voting. That the economic motive was closely knit with considerations of administrative reorganization is clearly seen by the tax amendment which was a highly

<sup>38</sup> Quoted in his *Inaugural Address*, February 1, 1926.

<sup>39</sup> *Ibid.*                      <sup>40</sup> *Ibid.*

<sup>41</sup> *Message to General Assembly*, February 2, 1926 (Senate Doc. No. 7).

<sup>42</sup> *Inaugural Address.*

<sup>43</sup> *Message to General Assembly*, February 2, 1926; *ibid.*, February 3, 1926.

important feature of Byrd's program. The hope of tax reduction receives prominent notice in the inaugural address, and on the very next day the governor sent the general assembly a message dealing with this subject.<sup>44</sup> A small point worth noting is that the message on tax reduction was sent to the legislature even before the message on the "Simplification of Government in Virginia."<sup>45</sup> The essential feature of the tax reform was an amendment to segregate different taxes for the use of the state and of the localities. The state was to tax all intangible property; while real and tangible personal property were left to the local authorities. The general assembly accepted the amendment, and the people ratified it in 1928. The beneficiaries were the landowners. Previously their real estate had been liable to taxes by both the state and the local governments. Now, only the latter could tax them. It is, perhaps, surprising that this old state with its aristocratic tradition and landed gentry should so stress the business aspects of its reorganization. One would expect rather to find this emphasis in other states whose spirit is more imbued with the temper of the modern commercial world. But Virginia's reorganization was decidedly that of a governor who placed questions of cost before those of service.

On the other side of the American continent reorganization appeared in a similar role. The state of Washington reorganized its government in 1921. At the suggestion of Governor Hart, a special session of the legislature in 1920 authorized him to present an administrative code to the 1921 legislature. The code was enacted, and it consolidated the government into ten departments. This reorganization was accomplished with quiet dispatch. Governor Hart, however, was not the real initiator. He was subservient to more powerful forces—the lumber interests and the Puget Sound Power and Light Company. As the governor happened to be amenable to their bidding, they favored a consolidation of the state government under his authority. These same interests maintained their in-

<sup>44</sup> *Ibid.*, February 2, 1926.

<sup>45</sup> *Ibid.*, February 3, 1926.



fluence until 1933. Governor Hart was succeeded by Governor Hartley. He belonged to the same group and was himself connected with a lumber company. But he was no figurehead. A man of strong will and headstrong temper, he had no sympathy with the "mollycoddling" activities of government. Under these two governors, both Republicans, the vested interests exercised their sway by means of three departments. The "department of efficiency" drew up the budget and instituted economies in administration (many of which, admittedly, were necessary). The "department of taxation and examination" saw to it that big business had its property assessed at low valuation for the property tax. Many homes of influential persons were grossly underassessed. In 1931 two Democratic members of the house committee on revenue and taxation proposed to the governor that there be a revaluation. He refused to assent. The facts about the undervaluations have come to light since 1933. The tax commission, appointed by the Democratic administration, has been examining the assessments. The third department, called "public works," dealt lightly with the public utilities which it was supposed to regulate. It assessed them for large amounts so that they could charge high rates. It could not control them; for its appropriation was cut to the bone, and it did not have enough money to bring costly lawsuits against the companies. On one occasion Governor Hartley ordered the department to desist from an attempt to revalue the Puget Sound Power and Light. On another he is reported to have said that he would like to take the department "and drop it in Puget Sound."

But in other states this interpretation does not apply as well. Illinois, on the face of it, might seem to have had a reorganization which was prompted by the desire to reduce expenditures and taxes. Governor Lowden, himself a wealthy man, had the outlook of big business. In his campaign he stressed the need to interject some of the methods of big business into the state government.<sup>46</sup> Both he and his chief supporter, Mr. Medill

<sup>46</sup> *Chicago Tribune*, October 5, 1916.

McCormick, attacked the rise of expenditures under Governor Dunne. The Democrat retorted by charging Lowden with his big-business affiliations. In a speech at Chicago he pointed out that Lowden was a director of the Pullman Company, and that six members of his campaign committee were presidents or directors of utility companies.<sup>47</sup> Yet, despite these connections, there seems no clear evidence that Lowden was intending to reduce taxes for the benefit of the well to do. As was seen, he adopted the issue of reorganization when it was bruited by his rival in the primary. Naturally, the slogan of efficiency and economy appealed to him. But he had as little intention to lower taxes as to extend services. At any rate, the entry of the United States into the World War near the beginning of his term led to an expansion of government activity which quite smothered any ideas of a smaller budget, if he had entertained them.

In Massachusetts the evidence is just as scanty. It was true that expenditures had greatly increased, and taxes with them. It is equally true, however, that the existing labyrinth of agencies was impossible to administer. There was a "true bill" against the organization of the administrative branch which does not have to be explained away by the insinuation of economic motives. Much of the impetus for reorganization came from Harvard scholars, from legislators, and citizens who genuinely disliked the sloppy way in which state affairs were being run.

How does the "big-business" theory apply to New York? Reorganization, as was seen, started here with the Republicans, and it is generally known that this party is connected with big business. Hughes himself was a lawyer for big corporations. But he had acquired a reputation by exposing dishonesty in the insurance companies; whilst the Progressives, who indorsed reorganization in 1912, were similarly antagonistic to the "malefactors of great wealth." Thus the movement had the support of the more liberal-minded members of the

<sup>47</sup> Among these was Samuel Insull.

party. The Republicans, who might have been expected to support big business if it wanted reorganization, were the politicians from upstate. Actually, they opposed. Their motive was plain. It was political, not economic. They feared the overthrow of the system under which they thrived. Hughes and Root and Wickersham were quite as much intent on defeating the bosses as on achieving economy. The early stages of the reorganization movement in New York are linked closely with the trend to make government more answerable to the people. The bosses resisted strengthening the governor because he might be a Democrat.

But does the theory hold good after 1918, when Smith identified himself and his party with reorganization? An argument on the affirmative is that Smith does use the analogy of the business corporation. In 1921 and 1922, when out of office, he was chairman of the board of directors of the United States Trucking Corporation in New York City. He reorganized the company's administration, "decentralizing its control and holding the vice-president in charge of each branch responsible for its operation in every detail."<sup>48</sup> He found the business experience valuable. "I was impressed with how much government is like business if a man is minded to put business principles into government."<sup>49</sup> The man who had reorganized a business proceeded in the next six years to reorganize a state. His first annual message of 1925 was, he says, "in the form of a report to the stockholders by the president of a company. I dealt with the State as a business corporation."<sup>50</sup>

Another argument is that in 1920, when the reorganization amendments were introduced into the legislature, he sought the support of businessmen. He made a campaign throughout the state, and addressed "many Chambers of Commerce, the Merchants Association of New York, and Boards of Trade and business organizations generally in all large cities of the State." He won approval, for "the reforms appealed to busi-

<sup>48</sup> Smith, *op. cit.*, pp. 222-23.

<sup>49</sup> *Ibid.*, p. 228.

<sup>50</sup> *Ibid.*, p. 322.

ness men."<sup>51</sup> Smith, moreover, attempted to secure tax reduction. In 1919 the legislature for the first time instituted an income tax. This was needed to supply the deficiency caused by the adoption of the Eighteenth Amendment. There had been a state liquor tax, which brought in \$26,000,000, a source of revenue which was naturally abolished by the amendment. Later in his administration Smith wanted to reduce this income tax. He proposed a 25 per cent reduction in his annual message of January, 1924. As there was to be a gubernatorial election that year, the proposal was obviously timed so as to reap a crop at the polls. Similarly in the next year, he suggested a further lowering of taxes. The Republican legislature opposed it each time, knowing that Smith would make political capital out of it.

But there are more cogent arguments on the other side. Smith had risen from humble origins, and his sympathies were with the underdog. He was too shrewd to be the unwitting tool of the vested interests, and too socially minded to be their conscious agent. Neither his temperament nor his outlook was that of Byrd or Lowden. During his administration there was a great expansion of services. Smith was keenly interested in social legislation. He favored laws which shortened hours and established better working conditions. He took care that factories were properly inspected—and this costs money. He was concerned with education, as he had himself little opportunity of going to school. Owing largely to his initiative, the school system was greatly extended during his tenure of office.

His use of the business analogy only means that he was talking, not as a businessman, but to businessmen. "Efficiency" was an American ideal; "economy" appealed to the taxpayer. It was natural enough for the governor in a state like New York to address associations of businessmen. Why not have their support, if possible? Or, at any rate, why not avert their opposition? If the state were described in terms of a business corporation, it was language which they could under-

<sup>51</sup> *Ibid.*, p. 190.

stand. If he had talked the language of theoretical political science, would he have had similar success? A shrewd campaigner will seize upon the symbols which attract his audiences. There were many men and women of wealth who aided Smith; but one need not impute economic motives to their actions. They were the independents genuinely desiring a better administrative structure. Looking to the general tenor of Smith's governorship and to the character of the man, one cannot fairly say that his reorganization was motivated by the vested interests.<sup>52</sup>

The preceding discussion leads to another question. It is of importance to ask how interested the public was in the movement. Were the voters generally aware of the significant changes which were being proposed? Undoubtedly, conditions varied from state to state. In Washington, as was seen, reorganization was adopted with celerity and without fuss. There was very little preparatory work, and virtually no campaign stage. In Indiana the 1933 legislature accepted reorganization just as speedily. The state was gripped by the hysteria of the depression, and reorganization was clutched at not as an end in itself but as a possible alleviation of the economic incubus. In Illinois there was much discussion by Hull and Lowden, but there can be no doubt that national and international issues dominated the popular mind during both the campaign and the legislative stages. The press is filled with references either to the war or to the corruption in Chicago politics. The state issue remained relatively in the background, and a student of the subject must pore through the center pages of the Chicago newspapers if he desires to find allusions to reorganization. It was not a front-page topic.

Much the same is true of California, to mention another state. California had a partial reorganization in 1921 which proved unsatisfactory. In 1927 Governor C. C. Young proposed a more effective plan which the legislature adopted.

<sup>52</sup> These judgments are intended to apply to the period of Smith's governorship; no references are made to his later career.

But the sorry feature of this reorganization was the governor's failure to give it adequate publicity. Young had served for several years in the state senate. He had a good knowledge of the state government and proved a conscientious administrator. His messages to the legislature exhibit scholarship and dignity. Such qualities, however, have their drawbacks. Governor Young was somewhat prosaic. He lacked the platform manner which is so necessary an adjunct of a chief executive; he did not know how to dramatize. His reorganization was earnestly intended to import sound administration into the state government. To a large extent it did so—but the people knew little about it. Governor Young failed of re-election. In a three-cornered fight, the mayor of San Francisco, a vastly inferior personage, defeated him. Much of Young's work was later undone because there was not enough active public sentiment to insist on its permanence.<sup>53</sup> "A failure in public relations" might be a suitable epitaph for the California reorganization.

Massachusetts, too, lacked excitement in the campaign stage. No governor emerged to lead the movement, and it could not focus around a personality. This was a reorganization in which the legislature seemed to take greater interest than the governor. There was little party conflict, and no undue publicity. In Virginia there was little conflict; but Governor Byrd did desire publicity. Like Lowden he had sought, and found, a good issue; and, unlike Lowden, he was fortunate in not having to compete with a world-war for news interest. He was himself owner of a newspaper in the western part of the state. He had enjoyed some practical experience in newspaper work, and he knew how to deal with reporters. Accordingly, Byrd was very careful to cultivate a good press. He frequently called in the reporters and gave them information about his plans. The people had an opportunity to know about his reorganization.

But New York is the star witness. The reorganization fight

<sup>53</sup> See chap. viii.

had three qualities to arouse a sensation-loving public. It was a battle on party lines; it passed through many vicissitudes over a long period; and it centered round a leader. Governor Smith, the "Happy Warrior," as he later came to be called, had to overcome the recalcitrance of successive Republican legislatures. He knew the strategy to follow. He would appeal to the people over the heads of their representatives. Create an active public opinion, and the legislature would bow to the demand. Smith was well equipped for the fray. A son of the East Side of New York, he knew how to talk directly to the less educated in their own language. Above all, he had an excellent grasp of principles and problems. His advisers were persons of intellectual power. He listened to them, understood them, and transmitted their ideas to the people in simple terms. His homely phrasing and telling analogies brought forth a response which a more academic manner could not hope to elicit.

Smith gives a good description of his method of direct appeal. In 1925 he made recommendations to reduce taxes. The Republican leaders opposed because they did not want him to reap the popularity of such a measure. The governor, while the proposals were being held up in the legislature, decided to use the radio:

I prepared a comprehensive statement of the whole financial situation of the State, and reduced it to simple, every-day language, so that everyone would know exactly what I was talking about. I spoke over the radio for an hour and a half on Saturday night, April 11th, 1925. At the close of my radio speech I suggested to my listeners that they communicate either by mail or telegram with their respective representatives in the senate and assembly. . . . My suggestion met with instantaneous response. Before I left the Executive Chamber on that Saturday night, telephonic communications indicated to me that citizens throughout the State were ready to heed my advice. . . . It was interesting to watch the mail bags arriving at the Capitol Monday morning. . . . Members of the legislature were overwhelmed with communications from home.<sup>54</sup>

Smith comments on the development of campaign methods. In his first campaign for the governorship (1918), he had to

<sup>54</sup> Smith, *op. cit.*, pp. 340-41.

rely almost entirely on newspaper accounts of speeches and on the reports passed around by the few who heard him personally. In the second, amplifiers were used in very large halls and for audiences in the street. In the third (1924), the radio was used, but only in a restricted fashion. But, by the time of the 1928 presidential campaign, radio "played probably the most important role."<sup>55</sup>

The governor was indeed determined to have the people understand. One aspect of government, most complicated to the layman, is a financial report. Smith had mastered these by hard study, and he wanted others to share the knowledge:

I took upon myself the task of making direct report on the State's fiscal operations at the close of the legislative session every year. I must frankly say that I copied my form from an advertisement of a well known bank appearing in theater programs and journals. It enabled me to set forth the facts in such a way that the financial process was easy to understand.<sup>56</sup>

His experience as chairman of ways and means had convinced him that the appropriation bill contains the secret to the activities of the state. His judgment was that "there is no way anybody can get a clearer or better idea of the government and what it is doing than by a study of the expenditures of money for the carrying on of its activities."<sup>57</sup> Smith, then, "got reorganization across." The press in the city was highly favorable and gave him the publicity he desired. He was fortunate, too, in having the support of many independent organizations. The New York bureau, the Short Ballot Association, the New York State Association, the League of Women Voters—these and other civic bodies held meetings, issued pamphlets, and aroused sentiment on his behalf. The people of New York knew what was going on.

Last to be considered are two questions of tactics. First, was it necessary to embody reorganization in the form of constitutional amendments? Second, was it better for the legislature to institute reorganization in a single comprehensive act or

<sup>55</sup> *Ibid.*, pp. 390-92.

<sup>56</sup> *Ibid.*, pp. 344-45.

<sup>57</sup> *Ibid.*, p. 352.



by piecemeal methods? Undoubtedly, some constitutional amendment was needed. If the short ballot were to be attained, it could be done only by amendment. But the question arises, "How much ought to be incorporated in the amendment?" Considering the difficulties of amending, it would be unwise to include provisions that were too detailed. But the advantage of specifying in the amendment was that it prevented the legislature from undoing the good work afterward.

In New York, Smith knew perfectly well that, if his reorganization were achieved only by statute, it would soon be destroyed. Indeed, "reorganizing" a department by statute was a favorite device at Albany. A law would abolish an old department and set up a new one (under a different title) almost identical with the old. This created patronage. The positions in the old department no longer existed, and there were new ones which had to be filled. Such laws were frequent enough to have won a common name. They were called "ripper" bills.<sup>58</sup> Hence, Smith insisted on having his new departments mentioned by name in the constitution. Similarly with the executive budget. Governor Whitman had drawn up a budget without authorization from either the constitution or the legislature. The result was that the legislators, quite literally, spat on it. So, the budget, too, had to be safeguarded by amendment.

One may, however, question the wisdom of stating in the amendment the maximum number of departments which the legislature may not exceed. This provision was inserted for the reasons given above. If no maximum were laid down, the legislature might merely create more and more departments as it pleased. The old trouble of a multiplicity of agencies would be rife again within ten years. To obviate the need of a further extensive reorganization in the near future, one had to insure that the legislature, when authorizing new functions of government, would intrust their administration to the existing agencies. Governor Smith told the writer that he could have se-

<sup>58</sup> *Ibid.*, pp. 114-15, gives examples.

cured the passage of the consolidation amendment by the legislature at a much earlier date, had he not insisted on a maximum.

There was, then, a sound justification. But, the provision might lead to one disadvantage. The state might be called upon to assume new functions in the future which could not fit into any existing agency. The administrative structure had *been frozen into twenty cubes by the constitution*. What could be done? Actually, this difficulty has already arisen, the results of which will be described in the next chapter. To specify a fixed maximum may prejudice reorganization almost as much as if the legislature were to create new departments *ad lib.* In insisting on this need, Smith had been impressed by what happened in Illinois. The Civil Administrative Code rested only on statute. Lowden did not amend the constitution. Consequently, under Len Small, his successor, the legislature began establishing new agencies exactly in the manner that Smith feared for New York. In Massachusetts an amendment was adopted, which was less detailed than that of New York because it did not actually list the new departments by name. But, it laid down a maximum of twenty, a limitation which has had regrettable results. Virginia, however, like Illinois, carried its reorganization through only by statute. But, it did adopt the short ballot by amendment. Here, too, agencies have been *multiplied since reorganization, though not to the same degree as in Illinois*.

Confusion, it seems, will arise in either case. If there is no constitutional restriction, the legislature can play havoc; and, if there is a limitation, new functions may be jumbled up with old ones where they do not belong. One is caught between the Scylla of legislative irresponsibility and the Charybdis of expanding governmental activities. Neither device can be generally advocated as the better for all states without exception. Each state must choose according to its own political conditions. Given the traditions and habits of the legislature in Illinois and New York, it would seem better to specify the

maximum even at the risk of rigidity. The administrative inconvenience that results from functions being jostled together is probably less serious than having agencies multiplied at random. But in Massachusetts and Virginia, whose legislatures have a better record, it would be wiser to omit the maximum. Any increase in the total of agencies could be left to the joint discretion of governor and legislature.

The second tactical point concerns the relative merit of comprehensive and piecemeal reorganization. Professor Harvey Walker<sup>59</sup> discusses the two schemes and favors the latter. He claims the advantage that the legislature can familiarize itself better with the problems at hand if it proceeds gradually and spreads out reorganization over several sessions. He claims also that the opposition to different sections of a comprehensive bill will combine to defeat the whole. But one cannot advocate a particular set of tactics as applicable to all states. Techniques should vary with political necessity. Ideally, one would like legislatures to adopt the slow method of careful trial and error. But not all legislatures are ideal. They do not all favor reorganization; sometimes they are bludgeoned into accepting it. Reflection on Smith's difficulties in New York shows that the piecemeal method would have been impossible. The fight would only have flared up anew at each proposal. If the campaign has aroused enough public sentiment to force the bill through the legislature, it is politically astute to enact the entire scheme at one fell swoop. Public sentiment may soon die down, if the opportunity is overlooked. If the preparatory work of investigation has been properly conducted, as it was in New York, one need have little fear of hasty legislative action.

The other argument, that the separate opposing groups will be combined, is not without merit. But it may be answered that the supporters will be combined just as much as the opposers. Those favoring reorganization were quite as heterogeneous as those on the other side. Would the energetic advo-

<sup>59</sup> Walker, *op. cit.*, pp. 81-82.

cates of the short ballot in New York have lent all their force to a "piecemeal" bill for merely reorganizing the department of public works? On the whole, then, if the struggle has been intense and bitter, and if the legislature is hostile or apathetic, a comprehensive bill is preferable. If the legislature is actively co-operating, there are possible, though not certain, advantages in a series of bills presented over a long period.

Enough has been said to indicate the complex pattern in the politics of reorganization. Conflicts between governor and legislature, between Democrats and Republicans, between city and country, between reformers and bosses, colored the struggle. Economic motives were no less influential among certain groups than desire for sounder organization in others. The leaders were as much pricked by personal ambition as they were solicitous for the public good. No single factor, no simple explanation, will yield an analysis that satisfies. The ramifications and interlockings of causes are too intricate for reduction to one element. The reorganization movement was a typical fragment of the political process.

## CHAPTER VII

### AFTER REORGANIZATION: THE GOVERNOR'S CONTROL AND STAFF AGENCIES

WHAT were the fruits of the campaigns and conflicts described in the last chapter? In what relation did the governor stand to the executive branch after reorganization had been achieved? Since the leadership of the governor is the central theme, certain features of the reorganization movement, though interesting in themselves, are not strictly relevant here. In consolidating administrative agencies there was much debate about the suitable location of each particular activity. Food inspection, as an example, has a manifest connection with the work of a department of agriculture. It has an equal connection with a department of health. Into which should it go, and what motives will determine its assignment? In one state the director of the public health department admitted to the writer that from the standpoint of administrative efficiency food inspection ought to be under his supervision. Many political questions, however, centered around this activity. How much inspection should be carried out and who should be inspected were problems which involved party politics. Hence this department head, who prided himself on having a department free from political imbroglios, preferred to see food inspection intrusted to the department of agriculture. Such sidelights on reorganization are significant. But only remotely do they touch upon the governor. In this example it made no difference to the governor's power whether food inspection was placed in the one department or the other. His control over each was identical. Of the changes introduced by reorganization, therefore, those only will be considered which are directly related to the governor's leadership.

The relation of the governor to the various agencies of the

executive branch varies according to the character of the functions which they perform. If the tasks of the chief executive are to be properly appreciated, the nature of the different administrative functions requires preliminary analysis. Administrative functions may be classified into three categories: (1) direct provision of services to the public, (2) control of the agencies providing services, and (3) conducting research for, and giving advice to, those in control. The agencies performing these functions may be described, respectively, as operating, control, and staff. The operating agencies are self-explanatory. It is they which spend the funds allotted by the legislature for purposes authorized by law. To oversee their activities, control agencies are instituted. All too frequently the relation of the two groups is marred by an attitude of suspicion on one side and of resentment on the other. Control agencies are too prone to find fault, whilst operating agencies object to restraints however legitimate. Staff functions, although often confused in theory and practice with control functions, serve a different purpose. A staff agency exists to conduct impartial research into the manifold governmental processes. It observes how the machine is running in order to advise both its designers and its driver. Although control and staff functions are commonly assigned to the same agency, they are better intrusted to separate hands. Objective fact-finding can hardly be expected from an agency whose bias is to play the monitor; nor will the operating agencies take fully into their confidence those whose "interference" they resent.

It is for the governor as chief executive to supervise and coordinate the operating agencies. This he cannot do without the assistance of the staff and control divisions. His success depends in large measure upon their effectiveness. Hence the manner in which those divisions are organized and their relation to the governor is a vital element in his generalship. A valid criticism of the reorganization movement lies in its failure to furnish separate agencies for staff and control. Whilst the reorganizers concerned themselves greatly with the latter func-

tions, they took scanty interest in the former. The staff functions, if provided for at all, were usually intrusted to an agency whose principal duty was financial control, and in consequence they have remained at a low ebb.

In general, the departmental organization of the agencies performing the two functions has been far from uniform. One system prevails in New York and Virginia. A number of independent divisions exist immediately under the governor's jurisdiction without any official to act as co-ordinator between them and the governor. The New York reorganization purported to establish an executive department. The law creates five divisions: the budget, military and naval affairs, standards and purchase, interdepartmental relations, and state police.<sup>1</sup> All these, save one, are under single heads appointed by the governor. The exception is the division of interdepartmental relations which is actually a cabinet committee composed of the governor and various department heads. Although the governor is the official head of the department, he delegated this charge to his secretary. In practice, however, the governor's secretary adds little toward co-ordinating the separate divisions. To all intents and purposes they are directly under the governor. Indeed, the fact that the division chiefs are themselves appointed by the governor places them on an equal plane with one another and with the secretary. The budget division is the most important, and its director probably ranks second in command of the executive branch. Through him the governor controls the finances of the operating agencies, and with him the governor maintains close contact.

Virginia has a roughly similar arrangement. The "Act To Reorganize the Administration of the State Government" says in its first section: "In the Governor's office there shall be the following divisions: Division of Budget, Division of Records, Division of Military Affairs, and Division of Grounds and Buildings."<sup>2</sup> All the division heads are appointed by the gov-

<sup>1</sup> *Laws of 1926*, chap. 78, Art. II, secs. 30-57.

<sup>2</sup> *Laws of 1927*, chap. 33, sec. 1.

error and are, therefore, independent of one another. In addition, there is a so-called "department" of finance. It is not a real department because it merely consists of four divisions whose separate directors are appointed by the governor.<sup>3</sup> There is no one to head them other than the governor. Actually, therefore, Virginia has a congeries of eight divisions all directly under the governor's supervision without any intermediary. Here again, in practice the most important division head is the director of the budget. But his position in the hierarchy is co-ordinate with that of the other directors.

A second system is exemplified by the three states of Washington, Illinois, and California. In these states the various control functions, with the exception of civil service, are integrated into a single department placed under a director. This official, clearly, has a key position in the administration. He has, in fact, been described as an administrative chief or even as state manager. In Washington he is the director of finance, budget, and business. In California and Illinois he is called "director of finance." There are some internal differences between these three departments of control. In Illinois and Washington the governor appoints the division chiefs as well as the director. There is thus the possibility that the director may not have full control of his department. In California the department of finance is well integrated. The division chiefs are under civil service (including the budget director) and are not separately appointed by the governor. But apart from individual peculiarities all three states have their control and staff agencies relatively more unified than those of Virginia and New York.

The third system prevails in Massachusetts and has been imitated in Minnesota. It is an interesting contrast to the preceding types. Since 1922 Massachusetts has had a commission on administration and finance of four members appointed by the governor for overlapping four-year terms. In view of the fact that the governor of Massachusetts has a

<sup>3</sup> *Ibid.*, sec. 9.



term of only two years, it is plain that this agency may curb the governor instead of aiding him. Thus the distinctions between the three systems may be expressed as follows. In Virginia and New York the staff and control agencies are composed of separate divisions under the governor and constitute a department only in name. If anyone integrates them into a single department, it is the governor. No intermediary officer relieves him of the task. In Washington, Illinois, and California, these agencies do constitute a department with a director at the head. Relatively, therefore, they are likely to be better integrated than in the two other states. The third type, Massachusetts, has integrated its agencies into a four-membered commission rather than into a department under a director. In practice the commission was for a long time dominated by its chairman. This type differs from both the preceding forms because the length of term of the commissioners makes them more independent of the governor. Under the other types, whether integrated or not, the governor at least has virtually complete authority.

#### FIRST TYPE: NEW YORK AND VIRGINIA

##### NEW YORK

With many of the agencies in the executive department the governor has little contact. The budget division, however, is of supreme importance. The fight to establish the executive budget did not come to an end with the ratifying of the budget amendment and its enactment into law. The legislature made yet another attempt to forestall this increase of the governor's power. The first budget to be submitted was that of Governor Franklin D. Roosevelt in 1929. It contained many lump-sum appropriations without details as to how they were to be itemized. The reason advanced was that some departments were still in process of internal consolidation and could not give definite estimates. They did not know, for example, just how many employees they would need or what functions they would be required to administer. The governor proposed to

itemize the appropriations after the passage of the act and before the beginning of the fiscal year on July 1. But the legislature, with its usual Republican majority, still hoped to check a Democratic governor. So it inserted in the act the requirement that the appropriations "shall be expended in accordance with a schedule to be approved by the Governor, the chairman of the Senate finance committee, and the chairman of the Assembly ways and means committee under the finance law of 1921."

Governor Roosevelt vetoed the items to which this provision was attached. He refused to give "two thirds of a purely executive duty to the legislative branch of the government." The legislature rejected his suggestions and passed the supplementary budget with the same provision that the lump-sum appropriations were to be segregated by the governor and the legislative chairmen. The governor, of course, used his veto. The attorney-general then tried to restrain the comptroller from making payments without the approval of the legislative chairmen, and a suit was brought in the courts. The Appellate Division decided for the legislature, but the Court of Appeals gave the victory to the governor.<sup>4</sup> The court settled the issue by posing a dilemma. Either the segregation of lump-sum items was a legislative function, or it was not. If it was, the provision must be unconstitutional since it delegated a legislative function. If it was not, it became similarly invalid because, contrary to the constitution, an administrative duty was being conferred on two members of the legislature.<sup>5</sup> Since this decision the principle of the executive budget has been placed beyond controversy. Governor Roosevelt and his successor, Governor Lehman, had no more legislative interference in administering the budget.

<sup>4</sup> *People v. Tremaine*, 235 N.Y.S. 555; *People v. Tremaine*, 252 N.Y. 27 (1929).

<sup>5</sup> See F. G. Crawford, "The 1929 Legislative Session in New York," *American Political Science Review*, XXIII (November, 1929), 914 ff.; "The Executive Budget Decision in New York," *ibid.*, XXIV (May, 1930), 403 ff.; R. J. Swenson, "New York Court Sustains the Executive Budget," *National Municipal Review*, XIX (February, 1930), 81 ff.

The budget system, as now established, is well worth studying. When the writer visited Albany, he asked a state official how he could best examine the increase of the governor's power. The answer was: "Look into the budget procedure." Chronologically, this falls into three stages: the formulation by the executive, the passage by the legislature, and the administration by the executive.

The first step is taken by the director of the budget, who sends out forms to the department heads requesting their estimates of expenditures for the following year. The constitutional amendment<sup>6</sup> requires that the estimates be returned by October 15. In actual practice, some are always late, and a few days of grace are allowed. For filling up these forms the department heads themselves ask estimates of their division chiefs or of the heads of institutions under their supervision. They will have already made cuts before they present the total estimate of the department to the budget director. Hearings are then held by the governor and budget director. The chairmen of the legislative finance committees are invited to attend. The department heads are called in to explain and justify their requests. Although the budget is drawn up annually, the nature of the hearings varies according to the year in which they are held. In the even-numbered years the gubernatorial election takes place, and each party wants to make political capital out of the budget which is passed in the legislative sessions of those years. These budgets will have been prepared at the end of the odd-numbered years, and it is then that the governor attends the hearings religiously. So do the legislative chairmen—especially if they are of the opposite party. After the hearings the budget director revises the estimates. Minor matters he settles on his own discretion. But on major questions he consults the governor. The budget then takes final shape and is presented to the legislature with a message from the governor by January 15 (in the second year of the gover-

<sup>6</sup> Constitution of New York, Art. IV-A, sec. 1 (amendment adopted November, 1927).

nor's term) or by February 1 (in his first year). Along with the budget and the message is sent a tentative appropriation act.<sup>7</sup>

There is an important difference between the budget and the act. The former is highly itemized for each department under the two main headings of "Personal Service" and "Maintenance and Operation." The act, however, though itemized under the former, contains many lump sums under the latter. This is the result of Roosevelt's successful fight. The governor is thus rigidly restricted by the legislature in regard to appointments. Each individual position and its salary is separately mentioned under "Personal Service." But he has some flexibility in handling the funds appropriated for "Maintenance and Operation."

How does the legislature treat the budget? Usually it passes the act virtually as recommended by the governor. The chairmen of the two committees in each house have received copies of the budget prior to its introduction in the legislature. They have (particularly in the odd-numbered years) been present at some of the hearings, and points of difference between them and the governor will be already adjusted. Hence they do not as a rule duplicate those hearings before their committees. If they desire additional information, they see the budget director or the department head concerned. The debate in the legislature tends to be perfunctory, and the appropriation act is adopted with but slight change.

In 1936, however, all did not proceed so smoothly. This was the year of a presidential as well as a gubernatorial election. The Republicans, who had a legislative majority, were anxious to capture New York with its large number of electoral votes. Accordingly, they altered the budget submitted by Governor Lehman. To win popular favor they reduced the gasoline tax from four cents to three cents. This meant a reduction in revenue of over \$14,000,000. Hence they had to decrease appro-

<sup>7</sup> The foregoing account is based on the writer's interviews with the budget director and officials in the budget division.

priations if the budget was to balance. This was accomplished by making an arbitrary cut of 10 per cent all around on traveling expenses, equipment, and supplies, and by stipulating that debt service should be paid for only nine months of the ensuing year. Of course, such a device only threw an extra burden on the 1937 appropriation act. The budget for that year was necessarily higher because it provided for fifteen months of debt service. Governor Lehman in his budget message for 1937 castigated the "arbitrary and futile omissions from the 1936 appropriations." He delivered a catechism on the respective functions of governor and legislature in enacting an appropriation act:

Before turning to details, I should point out that while it is my duty to formulate and present the executive budget, it is your obligation and responsibility to subject it to a critical examination. It is not only your privilege—it is your duty—to strike out any and all appropriations which are unnecessary and to reduce those which you consider excessive. . . . In the event, however, that you delete, decrease, increase or add an item, I shall expect, and the people of the State will anticipate, a full statement of the reasons which impel you to make the change. . . . Moreover, if you perceptibly increase the sum total of appropriations, you immediately assume responsibility and are required to propose and initiate measures to finance the additional expenditures.<sup>8</sup>

In administering the budget, the director has considerable control over department heads. To use the lump-sum appropriations for "Maintenance and Operation" most department heads have to submit to the director a statement of the projects for which they desire the money and convince him of the desirability of their proposals. He certifies his approval to the comptroller who then authorizes the payment of their vouchers. Should he fail to approve, as sometimes happens, they can appeal to the governor, who normally supports the director.

Various features in this system deserve comment. First, the control exercised by the budget director is continuous throughout the year. For each new project his authorization has to be

<sup>8</sup> *Budget Message of Governor H. H. Lehman, February 1, 1937* (Albany: J. B. Lyon & Co., 1937), p. iv.

secured. Otherwise the comptroller will not pay out the money. Second, this necessity to secure the budget director's approval gives him a certain amount of influence over policy. This point, it must be conceded, is highly disputable. Most students of administration agree that some current executive control is desirable. It is a safeguard which prevents a department head from exceeding his allotted appropriation. Also, if revenues are falling short, it enables the chief executive to avoid a deficit by a proportionate cut in expenditures. But, as is also agreed, only financial matters are the proper subjects of a financial officer's authority. There is the danger that his control over finances may lead to influence in regions which are not properly his.

This difficulty is always either rife or latent in all organizations that have a central finance agency. The same problem will be encountered in the other states to be discussed. Much depends on the self-limitation and discretion of the budget director. The spirit in which the budget is administered is a large element in the administrative success of government. The tendency for spending agencies to be at loggerheads with controlling agencies will be avoided only by the personal tact and sympathetic understanding of the budget officer. If he is socially minded and able to see the point of view of the department heads, he can soften a refusal to their requests. He should not merely be an expert on finances, on statistics, on accounting. Sir Robert Morant in England was a successful undersecretary of the treasury largely because he had the personality that conciliates and attracts, and because he was vitally interested in the services which the state performs for its citizens. In one state visited by the writer a department head referred to the budget officer as "a ——— nuisance, a superfluous officer, a meddler, and a no-good." In another the writer was told that, when a certain budget officer was removed, one department head commented: "Well, there goes that ———, and after him there'll be another ———, and another one

after him." This atmosphere of hostility and antagonism makes harmonious administration manifestly impossible.

In New York the writer heard some complaints about the administration of the budget. But they were objections of fairly moderate tone and did not indicate that the financial control was unduly stringent. One department head complained that he needed extra staff for an institution under his supervision. He had to convince the director that he required just so many extra persons, and that they should receive certain salaries. If he secured his approval, the request would be incorporated in the governor's budget for that year. Another officer, who was carrying out an internal reorganization of his department, resented having to discuss each single post with the director. A third commissioner, however, said that he was allowed sufficient latitude in itemizing his lump-sum appropriations and did not find his policies restricted by the financial control. On the whole, the general impression was that the director's supervision, though strict, was not illiberal.

The role of the comptroller should not be overlooked. He is elected by the people and is thus independent of the governor. His proper function should be to audit expenditures after they have been made and to report to the legislature. Instead, he conducts what amounts to a pre-audit before expenditures are made. There is no post-audit later. The budget director certifies to the comptroller that he has approved certain projects. If the latter is not satisfied with some of the detailed payments on those projects, he will refuse to allow the vouchers. Actually, therefore, New York has two pre-audits and no post-audit. The comptroller may be criticized because he sometimes rejects expenditures as inadvisable. The only officer to do this should be the budget director. The comptroller should disallow only those expenditures which are not reasonably made in the furtherance of legally sanctioned projects. His concern is with legality, not with policy. Specific instances were told the writer where the comptroller had queried certain payments, which,

whether advisable or not, were at any rate legal. An elective officer should not have this power. It corrodes the executive responsibility of the governor.

One other criticism may be made of the New York system. When a governor is newly elected, he is allowed insufficient time for preparing his first budget. Elected in the first week of November, he takes office on January 1 and presents his budget by February 1.<sup>9</sup> If he has had little previous acquaintance with the state government, this time allowance is quite inadequate. Departmental estimates will already have been sent in, and a tentative budget drawn up—by the outgoing governor. To some extent, perhaps to a large extent, the budget of the incoming governor is the work of his predecessor. Obviously more time should be granted. Admittedly it would be very difficult to place the election date earlier. The custom of synchronizing state with national elections is now well established. The easier course is to postpone the day by which the governor must submit his budget. March 1 or March 15 would be a more sensible requirement. The estimates of expenditures and revenues would thus be calculated at a date closer to the beginning of the fiscal year (July 1) and would probably be more accurate.

Other devices by which the operating agencies are controlled may be mentioned more briefly. The division of standards and purchase, for example, administers the centralized purchasing system. This helps the governor to exercise financial control and to institute economies in buying supplies. Another form of check is the personnel agency, a civil service commission composed of three members with six-year terms. As the governor's term is only two years,<sup>10</sup> it is clear that this body is intended to operate in independence of the governor. To a large extent, however, the commission has to co-operate with the budget director. It needs his approval in assigning salaries to specific positions in the classification scheme. Thus the financial as-

<sup>9</sup> Constitution, Art. IV-A, sec. 2.

<sup>10</sup> After 1938 the term will be four years.



pects of its work may fall under the governor's general supervision.

The staff functions are less adequately cared for than these tasks of control. The report of the Reconstruction Commission had proposed to set up a bureau of administration under a director appointed by the governor. Here would be placed a division of special reports under an assistant director. The division was never instituted. Instead, the power to conduct investigations into departmental efficiency was conferred on the budget director. But this is open to the objections already mentioned. The task of research, of impartial fact-finding, should not be merely an incidental adjunct to an agency whose primary work is that of control. The bias of a budget officer will normally be his concern with costs, and investigations should pay at least as much attention to the adequacy of service.

Other staff work is done by a group of persons who constitute the governor's office. The chief executive of New York has a large staff compared with those of his compeers elsewhere. The 1937 appropriation act allows for twenty-five. The most important are the secretary and the legal counsel to the governor. How he will use them depends, of course, upon the executive ability of the governor himself. Undoubtedly, in a large-scale organization the chief executive needs assistants who will prepare the material on which he can base his decisions. Literally hundreds of people come to see the governor of New York. A capable assistant, if he is both a sympathetic listener and an accurate reporter, can save the governor much time by sifting their stories and conveying to him the gist. He acts as a liaison between the governor and his department heads, or between the governor and the public. Of course, there will always be some opposition to a person in this post. People like to talk directly to the chief executive, even if they have confidence that the assistant will represent their views fairly and objectively. Those acquainted with the administrative history of the International Labor Organization will recall the

dislike of the British division chiefs for the "cabinet" of Albert Thomas.<sup>11</sup> Similarly, in recent American history one may cite the criticisms of the proposal to give the president of the United States six administrative assistants.<sup>12</sup>

Al Smith placed his secretary in a co-ordinating position at the head of the executive department. But the complaint is made that he did not really integrate the new administrative structure set up by the reorganization. Governor Lehman, an energetic executive, has used his legal counsel for some of this work. Mr. (now Judge) Charles Poletti told the writer that department heads would clear much of their business through him. If they had a problem which he could straighten out without worrying the governor, he would do so. The governor also delegated to him important liaison duties. For example, Lehman had been in close contact with the controversy over the price of milk in New York City. But at one point during this long dispute he was also occupied with hearing the testimony in a case concerning the removal of the King's County attorney. Mr. Poletti was deputed to keep track of the milk troubles and report to the governor in the evenings. Assistance of this sort is indispensable to a man with the multifarious tasks of the governor of New York.

#### VIRGINIA

The Virginia system parallels that of New York in having a group of divisions under the governor with insufficient intermediate co-ordination. Here, as in the Empire State, the budget division is the most important, and its director is the state's chief financial officer. Virginia had instituted its executive budget nine years prior to the administrative consolidation.<sup>13</sup> It is a significant contrast to New York, where the legislature fought bitterly for control over the budget even after consolidation had been achieved. Thus in Virginia one can com-

<sup>11</sup> E. J. Phelan, *Yes and Albert Thomas* (London: Cresset Press, 1936).

<sup>12</sup> *Report of the President's Committee on Administrative Management* (Washington: U.S. Government Printing Office, 1937), pp. 5-6.

<sup>13</sup> See chap. vi, p. 88.

pare the working of the budget both before and after reorganization and can see whether the two changes were supplementary. Virginia's experience teaches that the executive budget alone can alleviate some, but by no means all, of the defects inherent in a scattered executive branch. It cannot attain its greatest effectiveness unless accompanied by consolidation.

The present budget director has held office ever since the system was introduced and has served under numerous governors. He states that the outstanding fault of the financial procedure before reorganization was "its failure either to provide current information as to State finances or to make possible adequate control over the State's financial activities."<sup>14</sup> The governor was handicapped in preparing the budget because his information about receipts and expenditures was inadequate. Nor could he properly supervise disbursements, for there was "a multiplicity of semi-independent disbursing agencies."<sup>15</sup> State funds were only partly in the treasurer's custody. Large sums were "scattered among about forty-eight departmental bank accounts."<sup>16</sup> There was no pre-audit of expenditures, and department heads evaded requirements of the central purchasing act or granted increases of salary without authorization.<sup>17</sup> The director admits that there was at the outset much opposition from the department heads to such control as he exercised. But he was supported by the governors.<sup>18</sup> Since reorganization the financial system has improved. With the exception of the endowment and gift funds of state institutions all money is now paid into the state treasury. Hence there is adequate information about the exchequer. At 3:00 P.M. every day a statement is handed to the governor showing expenditures and receipts to date and the condition of the treasury. Also, there is a strict pre-audit and control of expenditures by the department heads.<sup>19</sup>

<sup>14</sup> J. H. Bradford, director of the budget, "The Budget and Reorganization" (address to the Institute of Public Affairs, University of Virginia, August 12, 1930), p. 4.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, p. 3.

<sup>19</sup> *Ibid.*, p. 5.

The Virginia budget is biennial and is submitted to the legislature in January of the even-numbered years. In the previous July the budget director sends forms to all departments and institutions. The estimates are returned by August. Then a budget commission composed of the governor, the budget director, the chairmen of the finance committees of the general assembly, and a few more legislative leaders, visits the state institutions to inspect their needs. After this the commission holds public budget hearings and revises the estimates. The governor hands over the estimates to the director for final revision. The latter's suggestions are then approved by the governor, who draws up the final recommendations. The director thereupon writes the budget message and a tentative appropriation bill, and the governor presents these with his budget to the general assembly.<sup>20</sup>

Several features in this system of formulating the budget deserve comment. First, the budget is open to the general criticism of being biennial. This is due to the fact that under the constitution the legislature has regular sessions only biennially. The New York legislature meets annually and hence makes possible an annual budget. There is no question that common sense in finance requires an annual budget. The fiscal year in Virginia begins on July 1. Hence the original estimates of the department heads for, let us say, the biennium July 1, 1936—June 30, 1938, are made in July and August of 1935. Thus, they are calculated nearly three years before the close of the period to which they apply. Even the governor's final recommendations, drawn up in December, precede the end of the biennium by two and a half years. Estimating so far in advance is too unsound for any defense. The remedy is to have an annual budget. Perhaps, on alternate years the legislature might be called to consider only the budget—as Al Smith has suggested for New York.<sup>21</sup>

<sup>20</sup> The writer's account is based on a valuable interview with the budget director.

<sup>21</sup> Alfred E. Smith, *Up to Now: An Autobiography* (New York: Viking Press, 1929), pp. 352-53.

A second feature is the existence of the budget commission on which the legislative leaders participate. Created by custom, the commission lacks statutory foundation. The good sense of the governors has convinced them that their budget is more likely to have a favorable hearing in the legislature if the legislative chairmen are already acquainted with it. In New York, as was seen, the chairmen attended the budget hearings. But there the motive is hostile, and the spirit antagonistic. In Virginia there is no party difference between executive and legislature such as prevails in New York, and relations are harmonious. Hence the governor invites the legislative chairmen, who attend in co-operative spirit.

Third, the budget director inserts in the appropriation act certain provisions which have no place there. One example concerned the department of education. The act contained the requirement that no college might institute an additional course without the permission of the governor and the budget director. Undoubtedly, financial control should not be extended to include such aspects of a department's work. The department head should enjoy sole responsibility for starting new courses in the educational institutions. This is not a function in which he should be supervised by a finance officer.

Lastly, it should be noticed that the governor and budget director are quite stringent in their treatment of departmental estimates. The message that accompanied the budget of the biennium 1936-38 states: "As, compared with requests for \$149,558,422 the budget recommendations for appropriations from general and special funds combined amount to a total for the biennium of \$116,819,098, a reduction from requests of \$32,739,324."<sup>22</sup>

The passage of the appropriation act contrasts with the New York practice. It is a well-accepted corollary of the executive budget principle that, when the governor revises estimates submitted by the department heads, the latter are bound by the revisions. They are not entitled to ask the legislative commit-

<sup>22</sup> *Message of Governor George C. Peery, January 8th, 1936, p. v.*

tees for more than the governor has permitted them. At times it is difficult to secure the co-operation of department heads. Presidents Harding and Coolidge experienced the difficulty in establishing a national executive budget. In New York the governors have secured acquiescence in their revisions from the department heads whom they appoint. Naturally, they have less control over the department of education whose board is virtually independent of the governor. The Virginian department heads, however, are by no means unaccustomed to seek from the legislature higher appropriations than allowed by the governor—perhaps because of the degree to which the governor and budget director reduce their estimates. Not only do they sometimes ask the committees for more against the governor's wishes but at times they even ask his permission to do so. One department head told the writer frankly that, when his estimates are reduced, he lobbies with the legislators in order to secure the amount originally requested. Another said that, when he finds his estimate cut, he suggests to the governor: "If I can persuade them to give me more, it's their responsibility, not yours. Do you mind if I ask them for more than you will allow me?" He receives the governor's assent and then puts his case to the committees, which at times increase the amounts proposed by the governor.

The administration of the budget is in the strict hands of the director. "Personal Service" is already rigidly itemized by the legislature, each position and the salary allotted to it being entered in the appropriation act. But, there is more flexibility in the appropriations for "Maintenance and Operation." The director conducts a system of quarterly allotments, and in any given quarter a department head cannot exceed his quota without permission. In this way there is a current check on the amounts spent by the operating agencies. The budget director must pass on the projects suggested by the department heads.<sup>23</sup> This is a pre-audit that concerns itself with policy. Another officer, the comptroller, also certifies the detailed vouchers be-

<sup>23</sup> Some departments (e.g., highways) are given more latitude.

fore they are paid. But he looks only to their legality. Department heads cannot make transfers from one item to another without the governor's (in practice, the budget director's) approval. If no new question of policy is involved, the budget director allows it at his own discretion.

It can be seen that the mechanism for financial control in Virginia is quite strict. What is the spirit that animates the machinery? The writer interviewed numerous department heads in Richmond and heard complaints against the budget director of more than normal intensity. Among these were, of course, the usual objections of the department heads who resented having each single employee specifically mentioned in the appropriation act. They felt no longer masters of their own staff. But there were other criticisms to the more serious effect that the director was not sufficiently broad minded, that he had only the idea of saving money, that he did not fully appreciate the service aspects of departmental work. The criticisms were repeated in enough quarters to justify one's supposing that they had real foundation.

On the other side it is only fair to observe that the director had held office under five different governors, any one of whom could have removed him at pleasure. Apparently, therefore, he has satisfied the chief executives even if he has dissatisfied the department heads. This may, of course, be attributable to the fact that the chief executives of Virginia in recent times have been primarily interested in reducing expenditures, and would thus naturally favor a strict budget director. Certain of the department heads in Virginia have shown considerable independence of the chief executive. They have opposed the governor and pressed their own views before the general assembly on other matters as well as the appropriation act. Their opposition to the budget director is perhaps part of this same tendency.

The potentialities of the financial control were seen in the depression when the governor was given emergency powers to prevent a deficit. He was empowered to reduce the available

appropriation if revenues were less than what had been estimated. In the biennium that ended in June, 1934, the governor gradually cut appropriations until in the second year the reduction amounted to 30 per cent. The appropriation act for the following biennium conferred the same power, but with the proviso that the reduction could not be more than 5 per cent.<sup>24</sup> Clearly, Virginia has an ample legal basis for financial control, and, equally clearly, in administration the most has been made of the possibilities. Whether the budget director or the department heads be in the right, there is no doubt that an unfortunate degree of friction exists between them, more so than in New York.

Virginia, however, has the advantage over New York in that it provides for an independent post-audit. In New York there is virtually a double pre-audit (one by the budget director on the score of policy, and one by the comptroller on the score of legality) and no post-audit. In Virginia there is the same double pre-audit by the budget director and the comptroller. But there is also an auditor elected by the general assembly and responsible to it, who examines the accounts after expenditures have been made.

One more point. Reference has been made to the fact that the executive department and the department of finance have no one to co-ordinate them other than the governor. Is this a serious defect? Political scientists have criticized the headless "department" of finance, and the string of divisions in the governor's office. Why did the Reed Committee and Governor Byrd prefer this to the well-integrated finance department proposed by the New York bureau? The official answer<sup>25</sup> is that there would be nothing for a director of finance to do. He would be superfluous. Financial control is already adequately performed by the budget director, and the governor can do all the

<sup>24</sup> George W. Spicer, "From Political Chief to Administrative Chief," *Essays on Governmental Administration*, eds. M. E. Dimock and C. G. Haines (Baltimore: Johns Hopkins Press, 1935), pp. 115-16.

<sup>25</sup> Stated to the writer by officials in the state government.



necessary co-ordinating. An officer of the state government, who had much to do with drafting the Reorganization Act, told the writer: "If I were head of the department, I couldn't earn my salary." Whether there were other motives is uncertain. Possibly the governor may have feared that a powerful director of finance placed in a key position might steal the administration out of his hands.

But, setting motives aside, the question is whether the arrangement works satisfactorily. The answer is that at least financial control is secured. If anything, it is there in excess. The budget director does carry out many of the tasks which would devolve on a director of finance. But there are other control functions which a state government ought to perform and which scarcely exist in Virginia. It is personnel administration which is sadly lacking. Virginia has no civil service system. Yet this lack does not produce the same political results as in states where spoils politics is a by-word. In Virginia, with its one-party system, employees have great security of tenure. The writer saw the records of employees in one department, and some had up to twenty and twenty-five years of service in the state. A new faction of the Democratic party may come to power; but it does not entrench itself by jobs. However, the lack of civil service does produce administrative disadvantages. There is no proper classification system, no uniform rule as to promotions, no correspondence between salaries in different departments. In fact, the elements of personnel administration, so necessary to the stimulating of morale, are lacking. Such control as is exercised over personnel comes under the purview of the budget director who is interested first and foremost in the financial angle. Now, if Virginia did institute a civil service agency, there would be another independent division placed under the governor. The need to co-ordinate would be even greater than it is now. In other words, if it be true that a co-ordinating officer under the governor is at present unnecessary, this is partly because some of the functions which such an officer would have to co-ordinate are not

yet performed in Virginia. Add those functions, which certainly ought to be added, and the need to co-ordinate would be plain.

But perhaps the governor is himself adequate to the task. Does he have a research agency, and is staff work properly carried out? Again the answer is in the negative. The governor's office contains nine persons, of whom only two (the secretary of the commonwealth and the executive secretary) could answer the purpose. But this is scarcely enough. It is true that he has a division of statutory research and bill-drafting, which, however, aids the governor in preparing legislation rather than in studying the operation of the administrative departments. It exists, also, to serve the legislature as much as to serve the governor. Virginia, therefore, does not have suitable provision for staff or control functions.

It might be argued in reply that the government of Virginia is not on a sufficiently large scale to need all this overhead organization. The state of New York is a gigantic problem in government. Its population and wealth exceed those of many sovereign and independent states. The very difference in degree, the sheer size and complexity, make it different in kind from Virginia. Compare New York's appropriations for 1935-36, a sum of almost \$300,000,000, with the \$18,300,000 appropriated by Virginia for the same fiscal year. Granted that New York needs superior overhead organization, is the same true of Virginia?

There is weight in this argument. The size of the control and staff agencies should vary with the size of the operating units which are to be supervised. Reasonably, less overhead organization is required in Virginia than in New York. But this does not solve the problem of how much is needed in Virginia, and it certainly does not prove that Virginia at present has enough. Indeed, the remark of a former governor will indicate that, even on the scale of Virginia's government, proper control and staff agencies are indispensable. Governor Pollard, the successor to Governor Byrd, is said to have commented

that the most important officials in the state government were the directors of the budget and of statutory research and drafting. The reason was that these two were not occupied with any specialized fragment of state activities but had to take a comprehensive view. The one, in administering finances, the other, in preparing legislation, were equally concerned with the problems of the state as a whole. Thus, in Virginia, too, despite its smaller scale, the need for overhead organization is realized. The legislature could well institute both a staff agency to advise the governor and a personnel officer to administer a civil service system. It should then create a director of administration as a chief assistant to the governor.

#### SECOND TYPE: WASHINGTON

The state of Washington may be contrasted with New York and Virginia. It differs from them in having a director of finance to co-ordinate the control work. It also differs in that it has a weak administration of the budget. Thus an advantage in one respect is balanced by a disadvantage in another. The reorganization of 1921 set up two departments which shared functions of control. The department of business control with its five divisions handled purchasing for the state and managed public buildings and grounds. It supervised in general the business side of the various state institutions.<sup>26</sup> The department of efficiency had both staff and control work. It conducted surveys of the state departments and institutions, largely with a view to economizing their administration, and was given charge of the budget when an executive budget system was established in 1925.<sup>27</sup> In 1935 these departments were abolished and a new one was substituted. This department of finance, budget, and business received the important functions which can be seen in the titles of its divisions—banking, savings and loan associations, budget, public institutions, and purchasing. Be it noticed that this conglomeration includes

<sup>26</sup> *Laws of 1921*, chap. 7.

<sup>27</sup> *Laws of 1925*, chap. 9.

operating as well as control activities. The first two divisions should certainly not be placed in a control agency.

The chief of the budget division was appointed in 1925 by Governor Hartley and was retained by the Democratic governor who succeeded in 1933. His preliminary task was to compel the departments to keep their accounts in a uniform manner and send in their estimates on forms which he distributed. There was opposition at first from certain department heads, but he had his way. The forms are sent before July 1 and have to be returned by the first Monday in September. The budget director compiles the estimates without alteration and submits them to the governor. The governor then holds hearings at which the department heads are examined in turn. The director of the department of finance, budget, and business, and the budget chief are present to give advice. After the hearings the latter officer draws up the final budget, incorporating the governor's revisions. A budget message and an appropriation bill are also written and are sent to the legislature with the budget. It should be added that the Washington budget is biennial and is, therefore, open to the same objections as Virginia.

The law<sup>28</sup> contains the wise provision that in the year of a gubernatorial election the governor must provide the governor-elect with a copy of the estimates and invite him to attend the hearings. This is intended to prevent the incoming governor's budget from being entirely prepared by the outgoing one. The value of the provision depends on the use to which the governor-elect puts it. Since the law was enacted there has been only one change in the governorship. In 1932 Hartley, while preparing the budget, invited his Democratic successor, Martin, to the hearings. Actually Martin came only once. He was accompanied by his adviser, Mr. (later Judge) Geraghty. Martin and Hartley talked privately in the governor's office, while Mr. Geraghty went in to attend the hearings for about an hour. Clearly, the law's intention was not fully carried out.

The legislature, when it receives the budget, tends in sub-

<sup>28</sup> *Ibid.*, sec. 8.

stance to accept it. Changes are made, however, usually in the form of decreases. The existence of two houses has sometimes caused delays over the cuts. Each house may reduce different items; and, if one house is more favorable to a particular agency than the other, there will be conflict. The differences have to be adjusted in a "conference committee." As passed by the legislature, the appropriation act is not rigidly itemized. It contains even less detail than the budget as submitted by the governor. Lump-sum appropriations are made under the general head of "Salaries and Operating Expenses." This lack of itemizing, though it allows for administrative flexibility, may confuse the departments. In one department the accounting officer told the writer that in his original estimate he may request a total of \$300,000 as salaries, stating all the individual positions which make up this amount. In the appropriation act he may be given a lump sum of \$250,000 for salaries without any details as to how it should be applied. He is not told whether he should keep all his staff at lower salaries, or fire some and give the remainder the amounts he had originally requested. This is the reverse of the complaints encountered in New York and Virginia, where departmental officers objected to the detailed itemizing of each position in the appropriation act.

The administration of the budget exhibits the particular defect of the Washington system. There is no provision for a pre-audit of expenditures by the division of the budget, thus enabling department heads to spend appropriations as they please without any central check. The only control the division exercises is a requirement that departments send in monthly reports showing how much they have spent. Of course, there is every difference between seeking approval before you spend the money and reporting what you have spent after the money is gone. All the budget chief can do is to write the department head and warn him that he is in danger of exceeding his appropriation. But he has no compulsive power. Unfortunate results may follow. The department or

institution may incur a deficit because there is no one to check its spending. In the biennium 1931-33 the state normal school at Bellingham spent \$40,000 of its appropriation on an athletic field. An expenditure of so large an amount was likely to upset its finances. The budget chief noticed the item in the monthly report some eight months before the biennium was due to end. He sent a letter to the head of the school suggesting that he exercise care for the remaining months. Actually, what happened was that the school ran out of funds two and a half months before the fiscal year ended, and incurred a \$3,000 deficit. The next budget, submitted to the legislature in 1933, recommended that this \$3,000 be appropriated. The house refused. But, when the bill came to the senate, the budget chief persuaded the finance committee to appropriate \$2,000. This sum would pay the salaries of teachers and other employees, who, after all, had not been at fault. Governor Martin vetoed the item, stating that he would not allow agencies to exceed their appropriations. (Theoretically, of course, the budget had been "his" budget, and the recommendation to appropriate the \$3,000 had been "his" recommendation. In fact, however, the budget was drawn up by Governor Hartley.) Later he allotted the desired \$3,000 out of the emergency fund which is granted to the governor for such purposes.

Another possible result is that departments will spend up to the very last cent of their appropriation, even though they could save some of the money. Certain departments and institutions habitually return nothing to the general fund. The budget chief told the writer that the legislature is more likely to increase the appropriations if a department has saved in the previous biennium. They have confidence that not all the money will necessarily be spent. But they are chary of granting more to those who consistently spend up to the hilt. Department heads viewed the problem in a different light. Some told the writer that, if they saved out of their appropriation, they were less likely to gain an increase. Indeed, if they managed on less money than they were granted, the legislature

would be likely to reduce their next grant to the amount which they actually spent! A partial compensation for the budget officer's weakness is found in the financial checks exercised by the audit and the division of purchasing. The purchasing division receives all requisitions for supplies and disallows any unreasonable item. The audit is none too satisfactory. Conducted by a division of the department of finance, budget, and business, it is not strictly independent.<sup>29</sup> It comes only at irregular intervals, roughly once a year.

One point is yet to be considered. Washington has its co-ordinating officer, the director of finance, budget, and business. Does he fill the gap which is left empty in New York and Virginia? To a partial extent he does. Since this intermediate officer exists, division chiefs who have a policy question to determine, will discuss it with him; and he may be able to decide on his own responsibility. If he were not there, they would go straight to the governor. But this director is by no means completely master of his department. The division chiefs, who are themselves appointed by the governor, might feel their authority equal to that of the director because derived from the same source. Of course, his co-ordinating functions would be more vital if Washington added to its control activities. The state lacks the administrative pre-audit, already mentioned, and a civil service law. The director stated to the writer that the existing personnel system was inadequate and needed improvement. If these two functions were instituted, as they ought to be, more control work would be accomplished—and *ipso facto* all the more need to co-ordinate. The director has, therefore, a potential usefulness which is not fully actualized at present.

#### THIRD TYPE: MASSACHUSETTS

Massachusetts differs from the systems just described in being partly designed to check the governor as well as to aid him. The four-membered Commission on Administration and

<sup>29</sup> Washington has an elective auditor, but he audits the accounts of the local governments.

Finance, instituted in 1922, consisted of the chairman, who was also budget commissioner, the comptroller, purchasing agent, and a personnel commissioner. In 1928 the attorney-general issued a ruling that by the terms of the law the personnel commissioner had to be director of a division under the commission and not one of the commissioners. The change was made, and at the same time the positions of chairman and budget commissioner became distinct from each other. Thus the commission now consists of a chairman, budget commissioner, comptroller, and purchasing agent, who collectively appoint the director of the division of personnel. What has been the relation of these commissioners with their overlapping four-year terms to the biennially elected governor?

The first executive budget was prepared in 1918 and submitted in 1919. Since the commission did not then exist, formulating the budget was the responsibility of the supervisor of administration. Cleveland and Buck have well described the preparation of this first budget.<sup>30</sup> It is an ironical contrast to New York. In New York, as was seen, the governors had the greatest difficulty in forcing their budgets on a recalcitrant legislature. The general court of Massachusetts had to force the executive budget on an apathetic governor. Calvin Coolidge was the governor who had the privilege of submitting the budget. According to the authorities cited, the budget was formulated entirely by the supervisor of administration. Coolidge held no hearings, had the budget in his hands only for five days, and made no changes. Even in his message to the general court he referred to the budget as "his" (i.e., the supervisor's) recommendations. This did not suit Mr. Benjamin Loring Young, the energetic chairman of the house ways and means committee. He introduced the budget to the house with a speech that received wide publicity, and proceeded to hold hearings. He produced an impression even on the governor. Some weeks later, when Coolidge submitted a supple-

<sup>30</sup> F. A. Cleveland and A. E. Buck, *The Budget and Responsible Government* (New York: Macmillan Co., 1920), pp. 217 ff.



mentary budget, he at last stated that the recommendations were his own. Since then the Massachusetts budget has been well established as an executive budget—thanks to legislative initiative.

The present budget commissioner has served in the state government for over thirty years. He was deputy to the supervisor from the beginning, remained deputy under the chairman of the Commission on Administration and Finance, and became budget commissioner in 1928. His work, as he described it to the writer, is that of the governor's "financial chauffeur." He sends out forms to the department heads and requests them to send in their estimates. He confers with them separately and makes some revisions. He then takes the estimates to the governor, who makes his own alterations. The governor may call in a particular department for explanations, but does not regularly consult with them all or hold public hearings. The budget commissioner in drawing up his recommendations will have already anticipated most of the governor's wishes. In an election year, when a new governor is going to take office, the commissioner follows the campaign and studies the policies outlined by the candidates. Thus, when he submits the tentative budget to the incoming governor, he has incorporated many of the latter's proposals.

The general court takes the budget very seriously and generally devotes more study to it than in other states. Fortunately it meets every year, and the budget is annual. Sessions in Massachusetts are likely to be long, lasting at times for half the year. Hence legislators are in close contact with the administration, become acquainted with the department heads, and grow familiar with the operations of the government. They are constantly visiting administrative officials, making inquiries and securing information. Their attitude on the whole is a co-operative one<sup>31</sup> and differs from the mutual suspicion which prevails in New York. It is the legislature, not the governor, which holds public hearings on the appropriation bill.

<sup>31</sup> There has been more antagonism in recent years.

It calls on the budget commissioner and department heads to be present and give evidence. Since the fiscal year begins in Massachusetts on December 1, provision has to be made for expenditures in the period between December 1 and the passage of the appropriation act. The Massachusetts law says that during this time departments shall spend at the same rate as the appropriations for the preceding year. This they do on the credit of the appropriations which they are going to receive.<sup>12</sup> The budget estimates as submitted by department heads to the governor, and by the governor to the legislature, are highly itemized. But the appropriation act as passed by the legislature is not. It contains many lump sums—another proof of co-operation between executive and legislature.

Massachusetts, however, has had some difficulty in enforcing the principle that department heads shall not seek higher appropriations than the governor allows them. Department heads work up their own lobby and can prevail on legislative committees. With the close connection that exists between legislators and the administration, it is relatively easy for a department head secretly to ask a committee member to raise his appropriation. Sometimes the lobbying is so open as to come to the governor's notice. There was one director of a division who attempted it for two years in succession. The chairman of the Commission on Administration and Finance complained to the governor, who told the director he would remove him if it occurred again.

The budget is administered by the comptroller rather than the budget commissioner. This officer examines the vouchers sent in by the departments. Those which he approves are further approved by the governor and council and are then forwarded to the treasurer. His duty is to investigate vouchers on the score of legality, not of advisability. He tries to keep departments to the items which they submitted in their estimates, and they must apply to him for transfers. But he cannot

<sup>12</sup> Compare the practice of "votes on account" granted by the British Parliament.

prevent them from spending to the full limit. Some, however, do return money to the general fund at the end of the fiscal year.

The work of the budget commissioner and comptroller cannot be properly viewed apart from the commission as a whole. Many decisions are made in common, for which the responsibility is a joint one. How, then, did the commission function? There is no doubt that the chief credit for its success was due to the chairman, Mr. Charles P. Howard. As previously mentioned, it was he who collaborated with Professor Hart in introducing the reorganization amendment at the constitutional convention. Mr. Howard served for some years in the state senate and thus became acquainted with the state government from the legislator's point of view. He was appointed chairman of the commission in 1925 and held this office until 1937. The commission, as he described it to the writer, is a means of administrative control.<sup>33</sup> The governor is the political leader and, together with the legislature, determines the policies which the commission has to administer. On policy matters, though the commission may disagree with the governor, it is obliged to acquiesce. The governor has all the weapons of political pressure at his command. The press will give him publicity, and he has influence in the legislature. Certainly, the commission could not balk a policy which he and the legislature had indorsed. The latter can always abolish the commission. But on administrative matters the commission can take, and has taken, an independent line. The comptroller may refuse to authorize a particular voucher. The chief of the division of personnel may block schemes of patronage.

Actual conflicts with the governor have arisen, and in 1937 Mr. Howard was not reappointed. He himself is a Republican, was appointed by a Republican governor, and until 1931 served under governors only of this party. Likewise the budget commissioner, purchasing agent, and comptroller were Repub-

<sup>33</sup> The following account is based on interviews with members of the commission and with Professor Holcombe of Harvard University.

lican appointees. Since 1931, however, the governorship has been in Democratic hands. Governors Ely (1931-34), Curley (1935-36), and Hurley (1937-38) objected to the whole organization of the commission, and particularly to Howard, who was its leader. They claimed they were only nominal governors and favored a reconstitution of the commission which would give them control over it. This conflict must be understood in the light of Massachusetts political history. The Republicans have long been ascendant. The New England aristocracy, with its wealth and social status, traditionally dominated the politics of the commonwealth and provided good government. The honorable reputation of the Bay State contrasts with the corruption that has stained the annals of New York and Pennsylvania. But the political balance in the state has been changing. Immigrants who were not imbued with accepted traditions arrived in great numbers. Boston has grown in size, and its large Irish population, as in New York, has become a Democratic stronghold. The old dynasty was shaken when the city under its new masters came to control the state. The governors since 1931 have been of this mold. They resented the social snobbishness of the influential Republicans, and they reacted to the sting that is felt by the parvenu. They found a state government so organized that the Republicans could check them. The council, whose electoral districts are gerrymandered in the Republicans' favor, shares many important executive functions. Similarly, the Commission on Administration and Finance appeared as a block on their activities.

It is interesting to observe what happened. When Howard took office in 1925, he had the task of conciliating the department heads. His predecessors, whether as chairman of the commission or as supervisor of administration, had been none too successful. Their terms had been very short. In fact, when the change was made from the supervisor to the commission form of organization an impelling motive was the desire to be rid of the existing supervisor. He was reorganized out of his posi-

tion. Howard secured favorable rapport with the department heads by holding monthly meetings with them. This he did regularly from 1926.<sup>34</sup> At first he found their attitude antagonistic. But he cultivated a better relationship by convincing them that his aim was to help and by asking to hear their grievances. After that, things went smoothly. It was possible by general discussion to devise better methods of administration. If, for instance, the comptroller was delaying department heads by slowness in authorizing vouchers, the procedure was speeded up. The Republican governors used Howard as their liaison officer for contacting the department heads. They would give their instructions to Howard rather than communicate directly. If he thought fit, the governors would call in the department heads, but Howard would also be present. For their part, the department heads went to Howard rather than directly to the governor. He was, in every sense, an "assistant governor."

The situation changed with Governor Ely. Howard had been reappointed in 1929 and could not be removed until 1933 except with the consent of the council. Ely could not secure this, for the council had an eight-to-one Republican majority. At first, the governor was openly hostile to the commission in general, and its chairman in particular. He felt that the appointees of previous Republican administrations were hampering his activities. Gradually, however, Ely found Howard indispensable. He had an intimate acquaintance with the state government and gave useful advice. Thus, in 1933, Howard was reappointed for another four-year term. The conflict continued under Curley. This governor intensified the tendencies which had commenced under Ely. An exceedingly able man, he was quite unscrupulous in his methods and played the game of spoils politics in a manner more reminiscent of Tammany than of Massachusetts. His attitude is indicated by a statement he is reported to have made: "I'll kick every patri-

<sup>34</sup> *Twelfth Annual Report of the Commission on Administration and Finance, for the Year Ended November 30, 1934* (Public Doc. No. 140), p. 2.

cian out of the State House." It was an uprising against the *ancien régime* led by a man of brilliant talents who was not "accepted." He continued the process, begun by Ely, of removing many of the old-time department heads. But he could not control the commission. Once he wanted to alter the terms of a contract already concluded between the state and a business firm. The commission refused to authorize the change. It further checked Curley in some of the attempts to pad the pay rolls and give civil service positions to patronage appointees. It could not, however, prevent his utilizing the new agencies created to meet the depression. Yet, despite conflicts, the commission continued unscathed until 1937. There was only one change. In December, 1932, Ely chose a Democrat to serve as comptroller. Throughout these years, Howard's tactful leadership was the principal factor in the commission's survival. His power of intellect and personality dominated his colleagues. Occasionally, the commission might divide three to one (the dissident being the new comptroller), but it never divided two to two.

Yet, although the commission withstood the hostility of Curley and Ely, Howard was less of an "assistant governor" to them than he was to their Republican predecessors. Democratic chief executives did not always want to communicate with their department heads through him, especially with the new heads whom they had appointed. Accordingly, they would sometimes call them in directly. They would also consult other members of the commission without Howard. Even so, the chairman continued to be in contact with the governor far more than any other administrative officer. He was still "chief administrator," if no longer "assistant governor." Eventually, however, Governor Hurley decided to deny Howard a fourth term.

Various lessons can be drawn from this experience. Clearly, it may be worth while to have an agency which, though under the governor, is partially independent of him. The commission plays an important role in relation to the legislature and

the public at large. In all state governments numerous requests are handed to the chief executive, and many of these cannot possibly be granted. Politically it is necessary that the governor be able to refuse them without incurring animosities. Here is where the commission has its use. The governor can turn over the requests to the commissioners: they can refuse; and the governor will then express his regrets and say that he has no authority to compel the commission. Thus the commission acts as a "buffer." The governor deflects the blows on it without sacrificing his popularity. Indeed, a member of the legislature is reported to have said: "The Commission was created and survives, because it does a number of things which it would make a Governor unpopular to do." Of course, there is the danger that the unpopularity will then fall on the commission. It can be avoided only by the tact of the chairman. He can say "no," because, unlike the governor, he is under no political obligations; but he must know how to mollify the disappointed.

While the commission serves this useful purpose of relieving the chief executive, it is also a potential check on him. In such tasks as allocating contracts or selecting personnel, the check may be a contributing factor to good administration. The opposition to Ely and Curley may be contrasted with the situation in the state of Washington, where the governor has full control over his department of finance, budget, and business. One of the Republican governors saw to it that certain contracts were assigned to his supporters, and none could check him. The Massachusetts commission has a better chance of independence because of its members' long tenure. If the terms were coextensive with the two years allotted to the governor, the practice might have developed from the very start of appointing new commissioners with a change of governor. As it was, Howard received his appointment in 1925. Governor Allen, who came to office in 1929, was Republican, and reappointed him as a matter of course. When Ely became governor in 1931, he was quite hostile to the commission, but could

not remove any members without the council's consent. He had to retain Howard whether he liked him or not, and by 1933 found him too good to lose. In 1935 Curley could not touch him, for his term was only half-expired; and, despite conflicts, he saw that Howard's experience was invaluable. It was not until 1937 that Hurley, during his first year of office, decided that a Democrat should have the position. This feature of the overlapping term helped the chairman to enjoy a far longer tenure than would otherwise have been the case. The same has been true of the other commissioners. They, too, were consistently reappointed.

Fundamentally the commission's relative success rested on the character of its members. Ely gave Howard his third term because he was an administrator whose experience was essential to the governor. At the same time, Howard was sufficiently independent to resist any demands that he thought unreasonable. His career in the state senate had given him influence in the legislature, and he was respected by legislative committees. Further, he could return to law practice and did not rely on a government job for his support. He could serve the governors without subserving them. Of similar independence is the director of finance in California. Governor Merriam appointed Mr. Stockburger, who had a good record as manager of two Californian cities and was known for a capable administrator. He, too, has been able to hold his own ground. If he were removed on political grounds, he could easily find another administrative post, and there might be a reaction against the governor in the press and the legislature. The governor, for his part, protects himself by appointing such a man; confidence in his administration is likely to be increased.

Security of tenure is well known to be the best guaranty of independence. In subordinate positions it is afforded by an honestly administered civil service system. In the top posts, which are above the reach of civil service, independence must be sought in the character and reputation of the men themselves. When spoils politics broke out in Massachusetts, there



was a control agency which could, for a time, check the governors. Illinois had no similar agency. Governor Lowden instituted a department of finance under a director whom he appointed for a term coextensive with his own. When he was succeeded by Governor Small, the tone of the administration changed. The governor appointed his son-in-law as director of finance, and thus had no opposition from this quarter to his maladministration. During Small's eight years many Illinoisians queried the wisdom of increasing the governor's leadership in the executive branch. They seriously wondered whether all executive authority should be concentrated under the governor. Yet, did not the reorganizers assume that, if the governor's power were increased, responsibility could easily be fixed? The results described in this chapter raise the question: Were they right?<sup>35</sup>

<sup>35</sup> Chap. x attempts an answer.

## CHAPTER VIII

### AFTER REORGANIZATION: THE GOVERNOR AND THE OPERATING AGENCIES

THE staff and control agencies just described help the governor to supervise the state's administration. They are the intermediaries between him and the operating agencies. Is there also a direct relation of the governor and the operating agencies? To what extent is he their immediate head? Does he actually shape the policies of department heads?

#### THE GOVERNOR'S CABINET

If the governor is to mold the policies of departments, he must have contacts with their heads either singly or collectively. These contacts would probably take as many forms as there are governors. The relation of a chief executive with his department heads is one of those personal links between human beings which defy rigid definition. How much a governor sees each person singly will be chiefly determined by his interest in that particular department, and by the personality of the department head. Clearly a governor will not have the same interest in the work of every agency. In some activities he will have special knowledge to contribute. In others he may be anxious to develop new services to the community. Others again may be deeply immersed in political controversy and require his attention as a political leader. In Massachusetts the writer was told that a governor would have little to do with the department of mental diseases. He rarely has a policy of his own to initiate in this field. Such a department, moreover, is not "in politics," for the reason that "people in insane asylums don't have votes." Of Governor Ely, who held office for four years, it was said that there were probably five department heads whom he would not have recognized, had he met

them in the corridor.<sup>1</sup> But in the same state, prison administration is of great importance politically, and the department of correction is very much "in politics." The governor, therefore, must keep in touch with its activities.

In New York the writer found that as great independence is accorded to the department of mental hygiene as that enjoyed by the corresponding agency in Massachusetts. The head of the department, a thoroughly capable executive, was fully competent to manage the department by himself. At times, intervals of two months would elapse between his meetings with the governor. He liked to make his own decisions, and the governor, having confidence in him, did not give him directions. Here, then, is an instance of a department head appointed, but rarely supervised, by the governor. Yet the department of social welfare in the same state has had much to do with the governor, despite the fact that it is headed by a board. It was organized under a board on the theory that "politics" would thus be kept out. Governor Lehman has made no attempt to influence its work. But the administering of relief inevitably leads to broad questions of policy on which it is advisable to have the governor's support. If, for instance, a union calls a strike and runs short of funds, should relief be given to the strikers and will the comptroller authorize payment? Will the legislature appropriate enough money for an adequate program of public assistance? Hence, the commissioner and the board have frequently sought the governor's advice on their own initiative. Another important function, provision for the public health, shows the folly of drawing universal conclusions. The writer asked the heads of the departments of public health in two important states whether they had much contact with the governor. One answered that such conferences were very rare. He was left to run the department on his own responsibility and did not seek the governor's advice. The other replied that he consulted the governor frequently, taking to him all questions of policy.

<sup>1</sup> Statement to the writer by an official of the state government.

One can, therefore, suggest three principal considerations determining the amount of personal contact between the governor and a department head: (1) the interest of the governor in the work of any one department; (2) the self-reliance of the department head; and (3) the political importance of the department's activities.

The conferences the governor holds with his department heads singly may be supplemented by general meetings at which all are present. These meetings are equivalent to a state cabinet. They are significant because they represent a new departure in state government. In the federal government and in the national governments of other democratic countries, the existence of the cabinet is taken for granted. But prior to reorganization it was not found in the states. This was one of the many respects in which the executive arrangements of the states differed from the federal government to which they were assumed to be similar. Of course, until the administrative agencies had been consolidated, cabinet meetings were an impossibility. When the executive branch consisted of the governor, of five or six other elective officers, of over twenty single heads, and a hundred-odd boards or commissions, a cabinet meeting would have resembled a legislative assembly rather than an administrative council. The cabinet had to wait for reorganization. It became possible when the administration was consolidated into a few departments. In some states a cabinet was provided for by law. Thus the Washington code, which enacted reorganization, laid down:

The Governor and the directors of the departments of the State government created by this act shall constitute the administrative board. The Governor shall be chairman of the board. . . . A majority of the board shall constitute a quorum, and a majority of those present at any meeting of the board may determine and advise as to questions of policy in the administration of any of the departments of the State government created by this act, submitted to the board by any member thereof.<sup>2</sup>

California, similarly, instituted a "governor's council" by a law passed in 1927. It was to consist of the heads of depart-

<sup>2</sup> *Laws of 1921*, chap. 7, sec. 14.

ments and to meet with the governor monthly. New York had a division of interdepartmental relations in the executive department which was tantamount to a cabinet. In many states, however, the cabinet was developed on the governor's own authority without statutory provision.

Has the cabinet proved valuable? Perhaps the first fact to notice is that cabinet meetings, although instituted in several states, have not always been regularly continued by succeeding governors. In the state of Washington the "administrative board" used to meet under Governor Hart but lapsed into obsolescence under Hartley. In California the "council" was religiously summoned every month by Governor Young but was discarded by Governor Rolph.<sup>3</sup> In Illinois, Governor Lowden states that he had "frequent cabinet meetings."<sup>4</sup> But they were neglected in the regime that flourished under Len Small. Byrd of Virginia had meetings, once a week at the beginning, and once a month later. They were far less frequent under Pollard and Peery. In Massachusetts there was no general practice of cabinet discussions, even at the outset. Occasionally, however, a governor would come to the meetings which Howard conducted with the department heads. Curley held a few meetings of his own, but they were unsuccessful. Division chiefs attended as well as their heads of departments, and the gathering was too large for effective consultation. In New York, Al Smith instituted a cabinet. It was continued intermittently under Roosevelt and Lehman but has recently been falling into disuse. These are facts which demand explanation. Why is the governor's cabinet vanishing? Is there no place for it in a state government?

Three of the governors who started the system in their states have left their judgment in writing, and all speak favorably. Lowden reports that the meetings enabled him "to keep pretty closely in touch with what was going on in the several depart-

<sup>3</sup> Governor Merriam has held a few meetings.

<sup>4</sup> Letter to Professor Leonard D. White, printed in the latter's *Introduction to the Study of Public Administration* (New York: Macmillan Co., 1926), p. 116.

ments.”<sup>5</sup> Smith thought them useful because they produced coordination of effort among department heads and led to a better understanding of all the problems of the state.<sup>6</sup> Young describes his council in enthusiastic terms. It brought together those in charge of various activities and gave an opportunity for unifying their work. It kept the governor continuously informed of departmental work with the least possible expenditure of his time. He could turn to a body of advisers, all of whom became familiar with the whole government. Finally, each director was stimulated to produce his best efforts in rivalry with his fellows.<sup>7</sup>

Why did not other governors find the same advantages? Various reasons may be offered. One is that governors differ in temperament. There are some men who can secure good results at a meeting of ten to twenty persons. They can create an informal atmosphere, elicit spontaneous suggestions, and yet keep control of the discussion. They thrive on a council of minds. Others, however, are not cut out for committee leadership. They may be more disposed to a conversation *à deux*. In Massachusetts the writer was told of one governor who came a few times with unsatisfactory results to the meetings of department heads convened by Howard. The department heads “froze up and wouldn’t talk.” Only when the governor was away would they unburden themselves without reserve. Further, governors who are in process of reorganizing naturally need to call together their department heads more frequently than in normal times. When, for instance, a system of pre-audit or of central purchasing is being instituted, there are a number of administrative arrangements which must be agreed upon in common. As soon as the new machine is running smoothly, there is less need for discussing *modi vivendi*. This helps to ex-

<sup>5</sup> *Ibid.*

<sup>6</sup> Alfred E. Smith, *Up to Now: An Autobiography* (New York: Viking Press, 1929), p. 363.

<sup>7</sup> C. C. Young, *Second Biennial Message* (Sacramento: California State Printing Office, 1931), pp. 71-74.

plain why the governors who accomplished reorganization held more frequent meetings than their successors.

There is a third reason which cuts deeper than the others. The problems arising in a state government which require cabinet discussion under the governor's aegis are not so numerous. The topics on the agenda at the meetings can be separated into two broad groups. There are, first, the internal administrative questions which concern the organization and operation of the departments. Second, there are problems of a broad political nature. Should the budget estimates be increased? Shall the governor, at the employer's demand, call out the troops against strikers? Is the regulation of public utilities really to be enforced? The first category is eminently suited to discussion among all the department heads. They will co-operate more readily if they have themselves assented to the procedures. Good morale will prevail only if all are treated alike and are subject to uniform rules. Each department head has his own complaint about some regulation of a control agency which irks him. At a cabinet meeting the regulation can be explained and justified, or, if unwise, it can be modified. Such counseling is essential to good government. But should it necessarily be supervised by the governor? In Massachusetts there were better results when the governor was absent. Of course, whether the department heads talk freely in his presence depends on his skill and on the confidence which he is able to inspire. In the writer's judgment, the governor, as chief executive, must certainly know the internal administrative arrangements. It is his duty to see that the machine runs well. He should, therefore, conduct the discussion of such problems.

But what of the other category of questions, those of a political hue? Here the governor is seeking advice. He wants a careful judgment on the delicate political problems that affect the life of the community. Can his department heads help him? This will obviously depend on the caliber and experience of his men. Some are essentially technicians and specialists.

In fact, the heads of departments in a state government tend to be professional experts rather more than their compeers in the national government. Most members of the president's cabinet are persons of general political sagacity. In the state governments the heads of departments of public health, of mental hygiene, of highways, are less likely to possess general political acumen. Many of those with whom the writer has talked have said that they are not qualified to give advice outside their specialized field. They regard cabinet meetings as a waste of time because they cannot help other departments or the governor, nor can the others help them. To some extent this is true, although governors often do appoint persons of political insight as heads of departments. If the governor needs advice, he may do better to seek it outside. He may have his confidential advisers, or he may approach the leaders of different interests in the community. It is, however, true that in point of numbers there are not as many fundamental political issues facing a governor as confront a president or prime minister. The scope of the state government is much more restricted, and many of its operations are noncontroversial. Yet, granted that the political issues in a state will be fewer and less intricate, some do arise, and the governor needs guidance. The governor should at least make the attempt to discuss general problems with his department heads. He should acquaint *them with the operations of the government as a whole, so that* they will not regard it merely from the point of view of their own circumscribed field of activity. If possible he should appoint persons who have political insight in addition to expert knowledge. He should imbue them with the feeling that they are co-operating with him in a joint venture. Thus will they obtain an understanding of his tasks and work in harmony with him and with one another. Admittedly, this can be fulfilled only under first-class leadership. With an inferior man at the top neither the cabinet nor any other institutional device is likely to guarantee success.



THE GOVERNOR AND THE CONSTITUTIONAL  
ELECTIVE OFFICERS

In considering the relation of the governor to his department heads, one must not omit the other elective officers. The short ballot is an interesting point on which to test the hypotheses of the reorganizers. The omens and prophecies which attended its birth differed as night and day. At the New York convention Elihu Root appealed in eloquent terms for the overthrow of the bosses. It was they who manipulated the long ballot to their advantage. The voters did not and could not know the minor officials whom they were electing; and the governor could not be held responsible for men whom he did not appoint. The remedy was to shorten the ballot and increase the governor's appointing power. Throw on him the floodlight of publicity and hold him responsible.<sup>8</sup>

It was answered that the short ballot would promote and intensify the very evils which it hoped to remove. Instead of a tyranny by invisible bosses, the governor would become boss, and a boss of far greater power. "Why, this octopus from Albany," exclaimed one speaker, "will reach out in every direction, and the State of New York will be in the grip of one man, who has the appointment of all the officials."<sup>9</sup> Indeed, it would strangle democratic government itself:

If the time ever comes when we take out of the hands of the people the right to elect their own State officers, if the time ever comes when only the Governor is elected and he is allowed to appoint all other State officers, and is given control of the patronage in every department of the State, we will then have broken down the American system of elective representative democracy and installed in its place a monarchy and a political despotism.<sup>10</sup>

The actual results both of the long and of the short ballot are a reminder that politics is a very hazardous field in which to forecast, since the same institution in different places may pro-

<sup>8</sup> *Record of the Constitutional Convention of 1915: Unrevised* (Albany: J. B. Lyon & Co., 1915), III, 3381 ff.

<sup>9</sup> *Ibid.*, p. 3379.

<sup>10</sup> *Ibid.*, p. 3394.

duce varying results, while dissimilar institutions in different places may yield like results.

Consider, first, the assumption that under a long ballot the other elective officers may oppose and check the governor. In some cases this is true, as examples illustrate. Oregon, a state which has not yet reorganized, has an important board of control,<sup>11</sup> composed of the governor, secretary of state, and treasurer, all elective. It is possible that the governor may be outvoted on the board. Actually, during the administration of Governor Julius L. Meier (1931-35) an unseemly quarrel developed. In the Republican primary of 1930 a Mr. Joseph had been chosen as candidate for governor. He died before the November election, and Meier, a close friend, entered the fight in his place. Rufus C. Holman, a friend of both Joseph and Meier, actively supported the campaign. Meier was elected, and within a few months of his taking office the treasurer died. In his place Meier appointed Holman.<sup>12</sup> But the friendship turned to rivalry, for Holman wanted to share the governorship. Disputes arose and finally led to a complete rupture. For three years they opposed each other with petty bickering. Many of the conflicts occurred on the board of control, where each wanted the supporting vote of the secretary of state. Early in 1934 the latter officer also died, and Meier was able to appoint in the vacancy a man of whose vote he was sure. After that, the governor and secretary of state held the meetings of the board without even notifying the treasurer. Apart from the merits of this particular dispute, it shows the inconvenience that may arise from electing co-ordinate officers who administer as a committee.

Another example comes from the neighboring state of Washington. It presents a significant comparison because Washington retains the long ballot, although, unlike Oregon, it has consolidated its departments. The code of 1921 envisaged the

<sup>11</sup> See chap. iii.

<sup>12</sup> The governor had the power to fill vacancies in the constitutional elective offices.

possibility of including the elective officers in the reorganization. It was stated that the governor might appoint them as directors of the new departments, in which case their salary could be increased from the amount provided in the constitution to the \$6,000 maximum which the act granted to department heads.<sup>13</sup> An official in the state government told the writer that the reorganizers inserted this clause in order to secure the support of the elective officers. The consolidation of so many functions under the governor would increase his power relatively to theirs. To forestall their opposition, Hart promised that he would appoint them to these new directorships, thereby augmenting their salaries. Then, when the act was passed, he failed to keep his bargain and appointed other persons. As a result, the constitutional officers were embittered and opposed him on the various committees of which they were joint members.<sup>14</sup> The hostility continued throughout the succeeding administration. It was aggravated by Hartley's domineering disposition, which resented co-operation where he preferred to command. He quarreled with the attorney-general who had given some opinions contrary to his wishes. Still more did he quarrel with the auditor and treasurer who sat with him on the state highway committee. On one occasion the auditor and treasurer, overriding the governor by a vote of two to one, ordered certain records to be handed over to the committee. At Hartley's orders the official who had charge of them refused. The treasurer and auditor then applied to the courts to compel him with a mandamus. The writ was issued, but the official still kept the documents. The court cited him for contempt, and he was committed to prison. After he had been there for two weeks, the treasurer and auditor gave way. To satisfy the court, a sham of handing over the records was performed, and the official was released. This incident clearly shows that a reorganization which omits the short ballot leaves a potential

<sup>13</sup> *Laws of 1921*, chap. 7, sec. 8.

<sup>14</sup> The law provided for four ex officio boards on which the governor sat (*ibid.*, secs. 5-8).

source of opposition to the governor. Since he now overshadows the other constitutional officers so completely, their reaction may be to assert their independence whenever possible. On the particular issues they may happen to be in the right—as in the conflict with Hartley—but they may also be wilfully obstructive.

The assumption, then, that independent constitutional officers may oppose a governor is borne out by the facts. But the short-ballot advocates proceeded to draw two conclusions. One was that it is bad for the governor to be opposed; the other, that there will be no conflicts if he appoints these officers. The first conclusion strikes deep. It asserts that the governor should be free from checks within the administrative branch. He should be given power to act uncurbed, even though he may act wrongly. This important assumption lies at the very heart of the reorganization theory. It must be carefully weighed after other factors have been considered.<sup>15</sup>

The second conclusion, that the governor will receive no hindrance from persons he appoints, seems likely enough. But it is not universally true. In one state which the writer visited, a particular officer had ceased to be elected by the people and was now appointive. One governor told his appointee that he wanted to expand the work of that department and directed him to prepare a plan which he could submit to the legislature. The department head did so; the governor indorsed it in private conference. The plan was then announced in the press, evoking at once the complaints of the vested interests because it involved a large increase of expenditure. The governor feared to incur their displeasure and abstained from supporting the plan. But the department head was determined to carry it through. Accordingly, he defended it before the people and sought the aid of members of the legislature. By these means the plan was adopted against the governor's wishes. Thus, although it may generally be true that an appointive officer obeys the governor's directions, there are exceptions. Indeed, if the gov-

<sup>15</sup> See chap. x.

ernor appoints first-rate men who have independence and principle, it is quite likely that at times they may go their own way. If the issue is one which the governor dare not take into the open, the department head may defy him with impunity. A removal may discredit the remover more than the removed.

On the other hand, it is true that the short ballot will enable the governor to solve conflicts which might otherwise have remained at deadlock. Virginia offers an example. The commissioner of agriculture was an elective officer from 1900 to 1928. Since then he has been appointed by the governor. The same individual has held office continuously from 1900. He was regularly re-elected by the people and has been retained by the governors since the short ballot. Here, then, no change in personnel resulted from the amendment. Was there any change in the commissioner's relation with the governor? Before the reorganization there had been a board attached to the department. Its members were appointed by the governor with the senate's approval, and it was supposed to determine the policy which the commissioner should execute. Clearly, there was the difficulty that an appointive board had no power to coerce an officer elected by the people. Actually, several conflicts arose between commissioner and board. As he could not be removed, the only way to restore harmony was to alter the personnel of the board, and this the governor did.<sup>16</sup> But once the commissioner became appointive, the balance of power shifted. Another conflict occurred between the commissioner and the board concerning the inspection of apple-growers. This time the governor upheld the board, and the commissioner had to give way. The experience shows that only through the short ballot could the administration of this department be the governor's administration. Again, however, one finds that on the merits of the question the commissioner was right. He wanted to enforce the laws against the apple-growers. They protested

<sup>16</sup> *Report on the Organization and Management of the State Government of Virginia, 1927* (prepared by the New York Bureau of Municipal Research [Richmond: D. Bottom, 1927]), p. 68.

and secured some board members to uphold their case. The governor sided with them, no doubt because of their political influence. Once more one queries the assumption that the governor is a safe repository of power.

So far the argument has shown that the governor may be opposed by appointive as well as by elective officers. Short ballot may increase the governor's legal authority, but he may not always be able to exercise it. What truth was there in the assumption of those who opposed short ballots? Did the governor become the octopus? Undoubtedly, some believe that popular election of an officer keeps a department out of spoils politics. In California the superintendent of public instruction is elected. He runs for office on a nonpartisan ticket. Those who favored electing the superintendent told the writer they regretted there was an appointive board attached to the department. This board laid down policies for the superintendent, an arrangement similar to the Virginian department of agriculture prior to 1928. Being nonpartisan the superintendent could not be under political influences; but the board, appointed by the governor, might be. It had the power to choose the textbooks for use in the schools, and it allocated printing contracts. Therein, it might show political favoritism. Here, then, was the belief that the elective superintendent was bound to be free from political interests, whereas the appointed board was likely to subserve them. Those who believe so should turn their eyes across the continent to Virginia, where the superintendent of public instruction used to be elected. According to the Californian theory, this should have kept out political influences. But there was one Virginia incumbent who aspired to the governorship and used the power of his office to build his own personal machine, an endeavor which has ceased since the office became appointive.

Similar incidents might be cited from the neighboring state of North Carolina, where the long ballot resulted in each elective officer using his patronage to create a machine for supporting him in office. An auditor of the state had one official in his

department who received a higher salary than his own. This official had independent political connections and could probably have defeated the auditor in an election. The latter knew this and wanted to avoid his competition. Accordingly, the auditor increased the man's salary to an extent that would lessen the incentive to supplant his chief. The elective officers gave each other reciprocal support at elections, thus perpetuating their tenure. Similar practices were known in Illinois, to judge from a statement made by Morton D. Hull at the 1920 constitutional convention: "The more you create of elective offices, the more you create ambition to occupy those offices, and every man who occupies an office of that kind wishes to succeed himself, and he considers it necessary to have an organization for the purpose of succeeding himself."<sup>27</sup>

In some contests, therefore, the long ballot may encourage the growth of political machines by stimulating rivalry among the elective officers. Yet, this statement also requires qualification. Oklahoma exhibits some possible advantages of not having all department heads appointed by the governor. The state is relatively new, its population is sparse, its resources not yet fully developed, and its life still colored by pioneer habits. In such a context good government is difficult. The state has not had time to forge its traditions, and politics are dominated by the surrounding atmosphere of individualistic self-seeking. The Brookings Institution made a survey of the state government and favored retention of the long ballot. The governorship at the time was in possession of a spoils politician anxious to build a machine. The heads of the departments of labor and insurance were both elective. The incumbents were excellent men and had been re-elected several times. Would there have been any gain in changing the system for the sake of a principle?

One naturally asks, then, whether the short ballot has led to the appointing of capable executives. Have the governors faithfully carried out the trust? Unfortunately, the short bal-

<sup>27</sup> *Proceedings of the Illinois Constitutional Convention of 1920* (5 vols.; Springfield: Illinois State Journal Co., 1920-22), III, 1530-31.

lot has not been adopted in sufficient states to warrant definite conclusions. In Virginia, according to the scholar who is in the best position to judge, the governor's appointments have been good.<sup>18</sup> The same commissioner of agriculture, who had been in office for twenty-eight years, was retained by the governor. The superintendent of public instruction was a new-comer and superior to his elective predecessor. The Corporation Commission, which had been elected by the people, was now elected by the general assembly; but the governor had power to fill vacancies which occurred in the intervals between sessions of the legislature. The commissioners selected by the governor are reputed better than those whom the legislature chose. In New York, too, governors have been careful in their appointments. Smith, Roosevelt, and Lehman have all been of the same party, and, therefore, just as in Virginia since Governor Byrd, there has been great continuity of personnel. With one exception the individuals appointed to the formerly elective positions have been deserving. The exception is a Democratic boss from the Bronx who treats his position of secretary of state as a sinecure. This appointment is a reward for his services in securing the votes on election day.

Elsewhere, the change has been slightly for the worse. In a western state there was an agency established by the constitution and placed under an elective officer. By an amendment it was consolidated with other agencies into a new department under an appointive head. It became merely a division, and its formerly elective head was reduced to the status of division chief. The incumbent, who had been re-elected by the people for nearly twenty years, was continued in office. He admitted to the writer that consolidation had caused some improvement. It was easier to co-ordinate different functions than before. But he felt that his division was not working as well because

<sup>18</sup> George W. Spicer, "From Political Chief to Administrative Chief" in *Essays on Governmental Administration*, eds. M. E. Dimock and C. G. Haines (Baltimore, Md.: Johns Hopkins Press, 1935), p. 110; "The Short Ballot Safe in Virginia," *National Municipal Review*, XXI (1931), 551.



political influences now interfered. Certain jobs had to be given to party-workers, and the inspection laws were less strictly enforced against the political supporters of the governor.

Such diverse results may be expected from the short ballot. Its aim is to unify the administration under the governor; and, if it does that, the administration will naturally take color from the chief executive. A first-rate governor can raise the standard of an agency by his appointments just as surely as inferior ones can lower it. But, be it remembered, the short ballot has by no means won universal acceptance. Illinois and Massachusetts saw it rejected by their constitutional conventions. Have the elective officers in these states been equally independent since reorganization? In Massachusetts the governor has more control than formerly, thanks to the executive budget. True, the budget commissioner does not revise the estimates of the elective officers. But in the administration of the budget their vouchers are subject to the assent of the comptroller and of the governor and council in the same fashion as those of the appointive heads. Although this control is supposedly confined to the question of legality, it might be delicately transformed into a guide on policy. Actually, however, most of the functions exercised by these officers in Massachusetts involve no matters of policy. The duties of the secretary of the commonwealth, for instance, are mandatory and clerical. For that reason their independence does not vitally affect the governor's power.<sup>19</sup>

In Illinois the constitutional officers have not always cooperated with the governor. From time to time they have conducted their own "lobbying" for appropriations, which the governor had no power to prevent. In 1937, too, an incident showed that those opposed to a governor may attempt to bolster up his elective colleagues as a counter-authority. Illinois was witnessing a bitter fight between rival factions of the Democratic party. Governor Horner was at loggerheads with the "regular" organization controlled by Mayor Kelly of Chi-

<sup>19</sup> The elective council does check the governor.

## THE AMERICAN GOVERNOR

cago and Patrick A. Nash, the member from Illinois of the Democratic national committee. Just as in the interparty conflicts of New York State, so this intraparty feud was intensified by a geographical split. Horner had support from the rural downstate region, whilst Kelly and Nash dominated the machine in Chicago. At the latter's bidding the senators and representatives from the metropolis opposed the bills sponsored by the governor. It was proposed to institute drivers' licenses, and there was prolonged discussion as to whether they should be administered by the secretary of state or the superintendent of highways. The former office already possessed the duty of issuing automobile licenses, whilst the latter constructed roads. Each side advanced arguments to show that the new activity fitted in better with one or other of the existing functions. But the crux was that the governor appointed the superintendent, whereas the elective secretary of state favored the Chicago group. Accordingly, the legislators divided into Hornerites and anti-Hornerites. Essentially, the debate concerned itself not with administrative efficiency but with the political balance of power. Thus, the continuance of the long ballot may prejudice the results of reorganization. If a governor's opponents want to confer new powers on constitutional officers other than the chief executive, the attempt to make the governor the real leader of an integrated administration fails.

Even more striking is the experience of California. After Young's reorganization, an inferior governor, Rolph, came to office. He was a man of quite opposite temperament to Young, a "good-mixer," and undignified. He liked the pomp and ceremony of office as much as he disliked the undramatic work of day-to-day administering. His playing to the gallery lost him prestige, and there was a popular reaction against him. Rolph was doubly unfortunate in having a term that coincided with the depths of the depression. He might have been tolerated in halcyon times, but he was no leader for an economic crisis. The legislature, however, had to institute new governmental functions to meet the situation. To which agency should they

be intrusted? There was an elective body, the State Board of Equalization, composed of the comptroller, ex officio, and four members elected from different districts. Receiving leadership from one aggressive personality, it struck for power. In 1933 the legislature enacted sales and liquor taxes. To administer them would give great political influence to any agency, as well as increase the staff it would have to employ. The board made promises to certain legislators that, if they voted to give it these functions, they could each name a certain number of the new employees. The legislature voted accordingly. This entirely changed the character of the board's work. Previously a tax-equalizing body with a small staff, it now received duties of great political importance and an army of employees. The members made bargains with one another. Each received his own sphere of power and was a "czar"<sup>20</sup> in his district. They could enforce the tax laws as they pleased, thus winning the support of the big retailers and the liquor manufacturers. From 1933 to 1934 the board was becoming "the political power in the State."<sup>21</sup> It was challenging the governor.

Since 1934 two factors have diminished its influence. One was an amendment, ratified by the people in 1934, which greatly enlarged the scope of the civil service law. Previously over two thousand positions could be changed with a new administration. This figure was reduced to less than two hundred. The board, which had secured the exemption of its employees from civil service, now came under the terms of the law. Those who had been in positions for less than six months were required to pass examinations, and many of the spoils appointees lost their jobs by failing to qualify. In addition to the loss of patronage, the board has suffered from the exposure of scandals in the administration of the liquor tax. A legislative committee investigated the matter in 1936, and the board's power is declining. This California experience proves, how-

<sup>20</sup> Statement of an official in the department of finance to the writer.

<sup>21</sup> Statement by same official.

ever, that the long ballot may provide an entry for those who would lessen a governor's power.

One reaches the conclusion that either long or short ballots can be manipulated. Under some circumstances the long ballot has encouraged spoils politics and maladministration. Under others it has been a safeguard against machines. In the states that have consolidated without a short ballot results have similarly varied. Some have witnessed gross and bitter conflicts with the governor; in others, the constitutional officers have bowed to his prestige or party leadership. The short ballot itself has turned out favorably in some quarters and led to high-grade appointments. Elsewhere it has become the thin end of a political wedge. The New York constitution of 1821 had a short ballot;<sup>22</sup> and the governor's appointing power was abused with all the disgraces of the spoils system. In the next constitution of 1846 men turned to the long ballot as a panacea. It was the power to appoint, they thought, which produced bosses and machines. Popular election was the remedy. Sixty-nine years later Elihu Root was excoriating the bosses and laying the blame on the self-same long ballot which had seemed the solution three generations before. Ironically he found for his *panacea the short ballot which they had discarded*. Can one avoid the conclusion that men who are out for power will make either system subserve their ends? The automatic safety device is as yet unknown to political science.

#### THE SURVIVING BOARDS AND COMMISSIONS

Similar problems are presented by the existence of boards and commissions. Prior to reorganization the states were "commissioned to death," and the governor had inadequate power of control. Hence the intention of the reorganizers was not merely to consolidate separate agencies into large departments but to place them under single heads appointed by the governor. This was not consistently carried out in practice. Virginia is a bad offender, having boards at the head of seven of

<sup>22</sup> See chap. ii.

its thirteen departments. Illinois, at the other end of the scale, placed single heads everywhere. But it had many commissions "attached" to the departments for special functions. In most cases the retention of boards was due to the political pressures described above.<sup>23</sup> However, the question of immediate concern is not why they were kept, but whether they were administratively desirable. Students of administration have often debated their pros and cons. Do the results of reorganization throw any light on this controversy?

Various arguments are adduced by those who favor boards. First, a board will keep politics out of a department. Many professions mistrust the governor on the ground that he is first and foremost a political leader. If allowed to appoint the head of a department, he will, it is held, mar the administration by his subservience to political ends. The remedy is to place at the top a board whose members are appointed by the governor for long overlapping terms. The board acts as a "buffer" between the governor and the executive head. Unless the governor has a very long tenure and appoints a majority of the members, he cannot influence the department's work. Note that this argument, and the fear which prompts it, is similar to the motives of the long-ballot advocates.

New York has two departments organized on this very theory. There had been much corruption in the school system when the governor appointed the head of the education department. It was placed out of his reach under a board, the regents of the state university, whose twelve members were appointed by the governor for overlapping twelve-year terms. They chose an executive director responsible to themselves. So strong was the public feeling that this system offered protection, that the reorganizers made no attempt to alter it. The Reconstruction Commission's report admitted that, in recommending the board's continuance, it was being inconsistent with its own principles: "However, we have had to take into consideration the fact that there is throughout the State

<sup>23</sup> See chap. v.

a very strong conviction that the present administration of the department by the Board of Regents is successful and that a high type of citizen has been elected to membership in the Board."<sup>24</sup> Consequently, the board was retained in 1926. The social welfare department is constructed similarly. The board has fifteen members appointed by the governor for staggered terms of five years,<sup>25</sup> who in turn choose a commissioner. This arrangement is generally favored by the social work profession. In 1936 the Wardwell Commission, which was directed by the governor to investigate the department, proposed that the governor appoint the commissioner and a board advisory to him. They pointed out that the board had been insufficiently progressive and had interfered too much with administrative detail.<sup>26</sup> Lehman approved the change. But the board members vigorously objected, and they were supported by the commissioner. The legislature, as usual, was antipathetic to the governor, and the board remained.

Another advantage claimed for the board is continuity. If the board members have long overlapping terms, their collective experience will be preserved. If, however, a new governor were to come into office every two or four years and appoint a new director, policies would shift and fluctuate. This theory is clearly embodied in the twelve-year term given to the board of regents of the New York department of education, where the executive head has held office for several years. Illinois illustrates the need for continuity. The head of the public welfare department appointed in 1917 by Lowden was removed in 1921 by Small. Near the end of his term he is reported to have said that he was just beginning to understand what the work was

<sup>24</sup> *Report of the Reconstruction Commission of New York State, 1919* (Albany: J. B. Lyon & Co., 1919), p. 133.

<sup>25</sup> There used to be twelve members with eight-year terms. The change occurred in 1936, when the department was consolidated with the Temporary Emergency Relief Administration.

<sup>26</sup> *Report on State and Local Welfare Organization in the State of New York, 1935* (Albany: J. B. Lyon & Co., 1936), pp. 52 ff. Four of the thirty-two members on the commission favored the existing system.

all about. Appointing a new man meant that an inexperienced person would take over the department just when the incumbent was becoming valuable. The point was emphasized by a speaker in Massachusetts:

No matter if we do have a lot of commissions, we get stable, consistent policies, by continuing boards, and not under the control of a man who comes in here one year and goes out another.

What is a Governor expert in when he comes in? Parks, agriculture, medical science,—those things? No. All of these boards are. In many of the boards men have been there fifteen or twenty years.<sup>27</sup>

It is further argued that for certain functions a group decision is indispensable. There is value in having a council of minds, and the product is likely to be better than that of a single person. In particular, agencies which have quasi-legislative or quasi-judicial functions need a board. On this theory, the administration of workmen's compensation in Virginia and of utility regulation in New York is intrusted to commissions. Finally, the board devotees claim that the department will serve the public best if representatives of different groups or sections form a policy-making board to control its work. Thus, in departments of education or of public welfare which supervise institutions in various parts of a state, it is common to place on the board individuals from the localities where the institutions are situated. In Oregon this representation of regions is formally required for the state highway commission. Its three members are appointed by the governor, one from each of the three congressional districts of the state.

If these arguments be examined, it will appear that all contain their particle of truth, but state only one side of the case. Boards do not always keep out political pressures. Often they introduce them. The writer asked the executive head of a mental hygiene department whether he would like to have a board as a protection from gubernatorial control. He replied that, if there were a board, the governor would make his appointments on the advice of political leaders in the various

<sup>27</sup> *Debates in the Massachusetts Constitutional Convention of 1917-8* (4 vols.; Boston: Wright & Potter Printing Co., 1918-20), III, 962.

localities. This can hardly be called eliminating politics. Even the length of term is not always a safeguard. If the governor's office is repeatedly occupied by the same man or the same faction, the boards can fall into the hands of the machine within five or six years, and the machine may even control the boards for a few years after it has lost the governorship. An interesting case in point is that of Wisconsin.<sup>28</sup> The La Follettes and their Progressive party who dominated the state desired to remove the president of the state university, a man of less liberal outlook than their own. Before he could oust the president, however, Governor Philip La Follette had to bide his time until he had appointed a majority on the board of regents. Here was a case where many regretted that the governor lacked the power to remove at an earlier date. It can also be denied that a single head appointed by the governor will necessarily corrupt a department. Admittedly, corrupt governors do debauch departments for their own political ends. But, equally, many worthy governors have raised the standard of departments whose heads they have been allowed to appoint. The record of the last three Democratic governors of New York has been an enviable one. Their appointments are certainly as commendable as the selections made by the boards of education and social welfare.

To the argument that a board encourages continuity Dr. McCombs has made the pertinent rejoinder: continuity of what?<sup>29</sup> Inertia and stupidity can be perpetuated as surely as vigor and sagacity. Some board members are undoubtedly valuable for their rich store of experience. Others are notoriously a clog and an obstruction. Continuity is good only if what you are continuing is good. This is the "inarticulate major premise." Nor should it be glibly assumed that only a board insures continuity. Many department heads appointed directly by the

<sup>28</sup> See Paul W. Ward, "Frank vs. La Follette," *Nation*, December 12, 1936, pp. 751-52.

<sup>29</sup> Carl E. McCombs, "State Welfare Administration and Consolidated Government," *Supplement to the National Municipal Review*, XIII (August, 1924), 461-73.



governor have had long tenures under successive administrations. A notable instance from New York is the excellent superintendent of public works who has held his post since 1923. In Virginia, similarly, there have been only three commissioners of highways since 1906, and the present officer has a tenure that began in 1922. Of course, in both these states the same party has retained power during this period. Yet in the state of Washington there was a change from Republicans to Democrats in 1933, and among the reappointed officers was the important director of finance, budget, and business who has served over ten years. There is not always a clean sweep every two or four years.

Whether boards always furnish a council of minds may also be contested. Many boards are dominated by their chairman or some other member. Often, indeed, the inquirer is told: "Mr. X is the board." Perhaps one might generalize that, if the board does not possess an outstanding personality, it is likely to be a failure. If it does, there may be little use for the other members. But this must be qualified. The mere fact that the dominating individual is associated with others supplies a potential curb. In addition, although the leading suggestions may issue from one member, useful alterations can be proposed even by those who lack creative ability. Further, when the work consists in laying down rules and settling disputes, decisions emanating from a group may carry greater weight. In California the writer was privileged to observe the work of the Board of Control. This body, composed of the comptroller and director of finance, *ex officio*, and a third member appointed by the governor, passes on the pecuniary claims which are sent in by private individuals. As there was virtually no disagreement about the merits of the claims, the writer asked one of the board whether one person could not have settled them without the assistance of two others. The reply was:

Of course. But, we have to turn down some claims, and then the resentment of the claimant would be fixed on one person. A Board of three

makes it impersonal. Also the legislature has to appropriate for the claims, and it's more likely to heed three than one.

Boards may be needed, then, for semi-judicial work. They are less desirable as policy-forming agencies. In the latter case the usual defect is that the board strays outside its province and meddles with administration.<sup>30</sup> To confine itself strictly to laying down policy requires self-restraint. In Virginia, for example, the Board of Education has a subcommittee of three which sits with the chief of the division of higher education to prescribe textbooks for the state teachers' colleges. This task should be left entirely to the administrator. When a department head boasts to an interviewer that he has established a satisfactory *modus vivendi* with his board, he generally explains that he has persuaded the board to confine itself to matters of general policy. The fourth argument held that the public interest is best promoted if representatives of the public can direct policy at its source. To this must be added, provided that the individuals truly represent the public interest. If they are the tools of special interests, placed on the board to bargain for their supporters, the board becomes a "pork barrel." Such representation can be achieved as adequately by an advisory as by a policy-forming board.

At any rate, if boards be retained, the Virginia system is to be avoided. A board should be in one of two positions. It should lay down the policies and select its executive head to administer, or it should be merely advisory to a director appointed by the governor. In either case the line of responsibility is clear. But Virginia has confused the two forms. At the head of five departments it has placed a board and an executive director, both separately appointed by the governor.<sup>31</sup> The board formulates policy but cannot compel the man who executes it. In case of conflict only the governor can decide the issue.

It should be remembered that a governor who desires to

<sup>30</sup> Consider the criticism of the Wardwell Commission (above, p. 184).

<sup>31</sup> Public welfare, agriculture, public health, highways, education.

direct the policy of a department headed by a board can utilize the executive budget as a means of control. Estimates of such departments are revised by the governor and must satisfy him before the budget is submitted to the legislature. Similarly, if the board desires the passage of certain legislation, the governor's backing is invaluable. Central purchasing is yet another device which gives the governor influence over administration. With these weapons at his disposal the governor can command respect. Unless the independent political support of the boards is very strong, the governor's power to impede them exceeds any obstructions they may place in his way.

#### THE NUMBER OF INDEPENDENT AGENCIES

The number of administrative agencies bears directly on the governor's capacity to co-ordinate.<sup>32</sup> Reorganization aimed at reducing the number of persons who reported separately to the governor. His control over administration would, it was thought, be more effective and thorough if his immediate contacts became fewer. A model was sought in the organization of an army where the commander-in-chief, at the apex of a pyramidal structure, has direct contacts with but few high officers. Government could not reproduce this tightness of organization, but it could at least come closer to the pattern. How near an approximation has been achieved cannot be judged from the exaggerated claims of the reorganizers. It is difficult to arrive at a precise total of the agencies existing in a government at any one time, because they may be grouped together in all possible degrees of dependence.<sup>33</sup> There are many self-styled "departments" which are not units at all but a mere bundle of co-ordinate divisions with a collective designation. The Virginian departments of finance and of conservation and development have already been cited. Massachusetts

<sup>32</sup> See Marshall E. Dimock, "Executive Responsibility," *Journal of the Society for the Advancement of Management*, III, No. 1 (January, 1938), 22-28.

<sup>33</sup> See William H. Edwards, "A Factual Summary of State Administrative Reorganization," *Southwestern Social Science Quarterly*, Vol. XIX, No. 1 (June, 1938).

has two departments, banking and insurance and civil service and registration, whose duality is revealed by their titles. New York's department of public service consists of two separate commissions for regulating utilities. Also, departments which contain divisions headed by boards are broken up internally, since the boards are relatively isolated from the rest of the agency. A striking example was the Free Public Library Board in Massachusetts. The department of labor and industry in the same state contains among its divisions a commission on minimum wages. In like fashion, over ten examining boards operate within the department of civil service and registration. Illinois, too, exhibits this feature. Many boards, some advisory, some quasi-judicial, some policy-making, were incorporated in various departments. The industrial commission placed in the department of labor is such an agency. The Civil Administrative Code declared that "said Act and all amendments thereto and modifications thereof, if any, shall be administered by the industrial commission created by this Act, and in its name, without any direction, supervision or control by the director of labor."<sup>34</sup> In New York the department of state contains a racing commission, athletic commission, and board of canvassers, all operating with marked independence. Indeed, this department is so disrupted that it was described to the writer as a "waste-paper basket" in which agencies that did not fit elsewhere were dumped.

Yet another practice has been adopted in departments which supervise state institutions. If the members of the directing boards refused to have their posts abolished, they were simply "attached" to the department. In Virginia five boards are "attached" to the department of education. In practice the superintendent of public instruction may exert some influence as he is an *ex officio* member of each board. But his vote counts for only one. In the public welfare department the commissioner formerly served on the boards associated with his department. Mr. Frank Bane, the energetic appointee of

<sup>34</sup> *Laws of 1917*, chap. 1, sec. 44.

Governor Byrd, managed to secure some degree of co-ordination. Since then the act has been amended, and the present commissioner lacks this voice in the policy of the institutions. Other control, however, is wielded through the executive budget. In revising estimates and in administering the appropriation act, the governor can brandish the financial stick. But, it is unfortunate that the direction of major social services should depend on this power of the purse. New York, per contra, has consolidated its corresponding departments more fully. The various institutions which come within the scope of the departments of correction, mental hygiene, and social welfare do not have their own boards. The commissioners are thus better able than in Virginia to pursue a uniform policy throughout the state.

A far more serious presage for the future is the reassertion of an old habit, the creation of new independent agencies. In course of time, assuming a continual increase in governmental activities, state governments are likely to become the unwieldy monstrosities that they were before. The legislature has not fully learned the lesson that, to preserve the results of reorganization, new functions should be intrusted to existing agencies. Nevertheless, there are attenuating circumstances. In Massachusetts and New York the consolidation amendment set an upper limit to the number of departments. New functions have been adopted which genuinely did not fit into the established scheme. Since 1933, for instance, the federal Constitution has ceased to prohibit alcoholic beverages. The problem of their regulation has reverted to the states. Where was this new activity to be placed? Contrary to the intention of the reorganizers, Massachusetts and New York placed it in the governor's office immediately under his direct supervision. The Massachusetts amendment stated that "the executive and administrative work of the commonwealth shall be organized in not more than twenty departments, in one of which every executive and administrative office, board and commission, *except those serving directly under the Governor or the council*, shall

be placed.”<sup>35</sup> The purpose of the exception was simple and sound. The twenty departments were meant to house the operating activities. The staff and control functions were to be headed by the governor. What actually happened was that some of the staff and control functions were included among the twenty departments, whilst some operating activities have been introduced into the governor’s office. Thus, the offices of the attorney-general, auditor, and treasurer, all of whom remained elective, were numbered among the operating agencies; and in the governor’s office are now to be found the Tax Appeals Board, Racing Commission, and Alcoholic Beverages Control Commission. Hence the reorganizers’ intention has been partly reversed. If Massachusetts had accepted a short ballot, the departments of the elective officers could suitably have been placed under the governor. As the short ballot was rejected, those officers were perforce counted in among the twenty departments. The reason why operating agencies have been intrusted to the governor is twofold. First, although the amendment forbade the creation of more departments, it furnished a loophole by allowing them to be placed “directly under the Governor or the council.” Second, the governor himself preferred direct control, as in the case of the Alcoholic Beverages Control Commission and the Racing Commission. The political power wielded by these agencies was welcome ammunition to Democratic governors who sought to destroy the “patrician” ascendancy.

In New York the reorganizers had similar hopes. The governor’s executive department was planned to contain staff and control activities, whilst the other nineteen departments were to concern themselves with operating functions. A place had to be found for new functions authorized by the legislature. Since the amendment imposed a maximum of twenty departments, outlets were contrived. New operating agencies were lodged in the executive department. Thus the alcoholic beverages control division was created under a five-membered board.

<sup>35</sup> Constitution of Massachusetts, Art. LXVI. (*Italics mine.*)

Another expedient was to dub new agencies "temporary" and place them outside the regular structure. The legislature, still Republican, did not wish, any more than previously, to confer new functions on Democratic governors. The reorganization amendment provided: "No new department shall be created hereafter, but this shall not prevent the legislature from creating temporary commissions for special purposes."<sup>36</sup> The Republicans saw here an opportunity to control at least some of the newer activities. The only limitation was a clause in the State Departments Law of 1926 providing that a "temporary" agency, if continued for seven years, had to be incorporated into some department. One example was the Saratoga Springs Commission, created in 1930,<sup>37</sup> composed of seven members with seven-year terms. Remarkable prescience of the legislature, which knew just how long the "temporary" agency would be needed! At the end of seven years its functions were to be transferred to the department of conservation, where they originally belonged. Another flagrant case was the State Office Sites and Building Commission, whose duties properly concerned the department of public works, an agency declared unconstitutional by the Court of Appeals. The whole body of departmental duty, said the court, is continuous. If parts may be separated into "temporary" actions, the basic purpose of the amendment might be defeated.<sup>38</sup>

In Illinois and Virginia there was no constitutional restriction, for the reorganization was accomplished by statute. New agencies could be freely created and made independent of the governor. It was the experience of Illinois which convinced Al Smith that a maximum must be inserted in the amendment. In Virginia the period since reorganization has witnessed the birth of an alcoholic beverages control board, a wrestling and boxing commission, and an unemployment insurance commis-

<sup>36</sup> New York Constitution, Art. V, sec. 3.

<sup>37</sup> *Laws of 1930*, chap. 866; *Laws of 1931*, chap. 621.

<sup>38</sup> See Finla G. Crawford, "The Executive Budget Decision in New York," *American Political Science Review*, XXIV (May, 1930), 408.

sion. The first two of these, admittedly, did not harmonize with any existing department. But the third bore a close relation to either the industrial commission or the department of labor and industry. The same political pressures which kept the commission and the department separate at the time of reorganization<sup>39</sup> resulted in the establishment of yet a third agency in this one field. Virginia adopted an unemployment insurance law in 1936 despite the active opposition of the Virginia Manufacturers Association and the tacit hostility of Senator (formerly Governor) Byrd. Who was to administer the law? The unions wanted administration placed with "their" department of labor and industry; the employers, with "their" industrial commission. The legislature, preserving neutrality, set up a new agency. This case strikingly illustrates an important truth. The political forces, operating to multiply agencies prior to reorganization, were not wiped out after it. Their continuance involves the danger that the "splitting tendency" will re-emerge. The reorganizers need to be as watchful in preserving their gains as they were vigorous in achieving them.

Clearly, the intention to consolidate into a very few agencies was not really fulfilled. The number that survived was still too large for continuous supervision by the governor. Hence, he gives his attention only to the few departments in which he is interested or which are immersed in politics. The others operate in virtual independence. The question then arises whether further consolidation would be either practicable or desirable. That it is desirable follows from the assumption that the governor ought to co-ordinate all agencies in order to give uniform direction to administrative activities. Many political scientists think that twenty departments are too numerous and would set the number for effective supervision far lower.<sup>40</sup> But is it practicable? The writer has asked many department heads whether their work could efficiently be consolidated with some closely related activity. In New York, for

<sup>39</sup> See chap. v.

<sup>40</sup> See Dimock, *op. cit.*, *passim*.



instance, there are many links between the five departments of health, charities, correction, mental hygiene, and social welfare. Could some, or all, of these be unified? A preliminary obstacle would be the opposition of professional or economic groups interested in the work of each department. Assuming that these political handicaps could be surmounted, would such consolidation be administratively wise? The usual answer was that these departments were already quite large enough for one man to handle. If other functions were added, they would become unwieldy. Indeed, as it was, some of the activities were intrusted to separate divisions which operated almost independently of the rest of the department. In Massachusetts, for example, the department of public works supervises the construction of bridges, waterways, and highways. The last alone present a colossal problem, quite out of proportion to the others. Virtually, the division becomes another department.

The unwieldiness of existing departments may be partly due to their own internal organization. Each should be constructed in hierarchical fashion similar to that of the government as a whole. The department head must have his own staff and control agencies, and a cabinet of division chiefs. He is then better equipped to supervise. Some reorganizing along these lines has been accomplished, as in the New York department of social welfare which was reconstituted in 1937. Formerly, the commissioner himself had charge of financial control. There were no deputies between him and the departmental divisions, which were "hanging round the Commissioner's neck like millstones."<sup>4</sup> At present, there is a hierarchical structure. The commissioner has his deputies, and a newly formed division of control. If departments were organized in this fashion, they could embrace more functions without becoming administrative impossibilities. Thus, the whole executive branch could be unified into a very few departments under the governor, each of which would be a microcosm of the whole. As yet, the

<sup>4</sup> Statement by Commissioner Adie to the writer.

approximation to this pattern is remote and, even if administratively possible, is politically improbable. The reorganization is thus incomplete. The chief executive has still too many millstones around his neck.

#### THE GOVERNOR'S POWER TO APPOINT AND REMOVE

Whatever the number of departments, it is assumed that the governor cannot control them unless they are directed by men amenable to his bidding. The reorganizers believed that he should be able to choose and dismiss his immediate subordinates at will. It is, of course, true that no governor can be responsible for men whom he does not select. Either give him the appointing power, or do not hold him responsible. But it is not quite so certain that he will fully control everyone whom he has appointed and can remove. An officer of sufficient independence may oppose his chief executive, and the latter may not dare a "showdown." Consider the case where the governor asked his department head to prepare a legislative program, and then failed to support him.<sup>42</sup> Although the officer proceeded on his own initiative, the governor did not exercise his power of removal. In Oregon, similarly, Governor Meier wanted the chairman of the state highway commission to sell certain bonds. He refused to obey and, as the governor was insistent, resigned his post. But popular opinion supported him. The governor was forced to retract, and the chairman returned to office. The power to "hire and fire" does not necessarily command subservience.

Three of the four states to which main attention has been given accord the governor adequate legal power in appointing and removing. The Illinois code provides: "Each officer whose office is created by this Act, or by any amendments thereto, shall be appointed by the Governor, by and with the advice and consent of the Senate."<sup>43</sup> Their terms were to last two years. In Virginia a few officers are appointed by the governor alone. But the majority require confirmation by the general

<sup>42</sup> See pp. 174-75 above.

<sup>43</sup> *Laws of 1917*, chap. 1, sec. 12.

assembly. Nearly all hold office "at the pleasure of the Governor." One or two, such as the commissioner of agriculture, have a fixed term of four years. In New York the division chiefs of the executive department are appointed by the governor alone, whilst heads of departments receive senatorial confirmation. All are removable by the governor "whenever in his judgment the public interest shall so require." The governor must file the cause of removal with the department of state and then report to the legislature.<sup>44</sup>

Is confirmation by the senate or the whole legislature necessary? Politically, the reorganizers could not avoid inserting this provision, supported by a long historical tradition in both federal and state governments. The legislature was not likely to forego its prerogative. Is the power of great practical importance? It is urged that the governor will make better appointments if he must run the gauntlet of legislative scrutiny. That publicity provides a safeguard is partially true. If the opposition party is at all vocal, it can create trouble in the legislature. In practice, though some debate may arise, it is unusual for the legislature to turn down nominations. If the majority is of the same party as the governor, they will naturally approve his choice. Neither in Illinois, nor in Virginia, nor even in New York, have the governors found it difficult to secure confirmation. Indeed, in states whose legislative sessions are biennial, the check proves very slight. Vacancies may often occur when the legislature is not meeting. The governor then makes a "temporary" appointment to be confirmed at the next session. The legislature is not likely to turn out an officer already installed. In Virginia many department heads have been appointed in the intervals and have invariably been accepted.<sup>45</sup> The governor could utilize this loophole as a means of entirely avoiding confirmation. He might abstain from appointing until the session was finished, or he could secure confirmation, and, when the session terminates, remove the appointee and

<sup>44</sup> *Laws of 1926*, chap. 78, art. 1, sec. 11.

<sup>45</sup> Spicer, "From Political Chief to Administrative Chief," *op. cit.*, p. 110.

substitute another. In New Mexico, Governor Seligman, who was in opposition to the senate, merely refused to send in nominations at all. The press clamored at the illegality; and there is no doubt that a writ of *quo warranto* could have been sought against the appointees. But no one took any action to assert the senate's rights, and the governor won by default. It would, however, be hard to imagine this in New York or Massachusetts, where the legislature is more sensitive to its powers. The legislature, however, may at times use the power as a weapon for bargaining with the governor. "We will confirm this man, if you sign this bill, or give us so much patronage." The governor must be willing to barter if his nominations are to be confirmed. Admittedly, such practices pervert the true purpose of the requirement. But, what formal provisions can hope to check the maneuvers of political compromise?

In Massachusetts, on the other hand, the governor's power to appoint and remove is quite restricted. It is not the legislature, or one of its branches, which checks the governor, but the council—the lineal descendant of the council attached to the royal governor in the Colonial period.<sup>46</sup> This body is elected by the people. Eight members are chosen biennially from eight districts of the state, and the lieutenant-governor presides *ex officio*. Customarily, the council has a Republican majority, for the districts are arranged to the disadvantage of the Democrats. Consequently, difficulties have arisen in recent years when Democratic governors took the helm. The council shares many important executive functions, as can be seen from the titles of its committees—pardons, charitable institutions and prisons, finance, accounts and warrants, waterways, public lands and railroads, state house, military and naval affairs, and nominations. The last is particularly relevant. When nominations are sent to the council, they are left to "lie on the table" for a week, during which they are discussed and receive publicity. Appointments in Massachusetts are made for a fixed term of years, exceeding in many cases the two years allotted

<sup>46</sup> See chap. ii.

to the governor. Hence a new chief executive is always saddled with many appointees of a previous administration. Removal is no easy matter, since charges must be preferred before the council.<sup>47</sup> Thus the governor is hampered in three ways. The council confirms nominations; many officers have not yet finished their terms when he takes office; removals require the council's sanction. These provisions were not found restrictive whenever the governor was Republican. Up to 1931 the council remained dormant. But Ely resented sharing executive duties with a nine-membered board, on which there was only one Democrat at the time. In order to have his appointments confirmed and generally to secure the council's co-operation, he "traded" with the members. Matters grew worse under Curley, who came into conflict with the council, as well as with the Commission on Administration and Finance.<sup>48</sup> Since the council consisted of the usual Republican majority, Curley continued the practice of political huckstering. Some appointments, however, the council positively refused to confirm. An amusing case was the office of state librarian. The incumbent resigned to become librarian of the city of Boston. Curley had a vacancy to fill. At a meeting of women Democrats he grandiosely announced that he would appoint any person whom they chose to nominate. By this magnificent gesture he was spreading patronage over a few hundred individuals. They selected the president of their organization, and the governor duly sent in her name to the council. This lady, however, had no experience of library work, and the council refused approval. Four more times Curley submitted her name. Each time it was rejected. Eventually the press began to fasten on it, and it became a public issue quite out of proportion to its intrinsic importance. Curley had to extricate himself and could do so only by a good appointment. He selected the dean of a law school in Boston who had built up a library there. The nomination was then unanimously confirmed. In this instance, the state undoubtedly benefited from having a check on the governor.

<sup>47</sup> See chap. vi.

<sup>48</sup> See chap. vi.

Curley realized that he must win control of the council. When a vacancy occurred on the superior court, he appointed one of the Republican councilors, a man of inadequate training. Another Republican member accepted appointment as chairman of a finance commission set up by the state to administer the insolvent city of Fall River. In their places he appointed the Democrats whom those councilors had defeated at the election. But the council, even with its Democratic majority, would not do his bidding, save at a price. The Republicans had been successful in "trading," and Democrats could profit likewise. Curley, therefore, won his support; but the councilors secured their bargains.

These events show the effects of creating a guard over the governor. If the guardians are incorruptible, well and good. "*Sed quis custodiet ipsos custodes?*" Should they have desires of their own, bargains with the chief executive will certainly follow. It is, at any rate, manifestly unfair to set up a checking agency which will always be dominated by one party. The other party is bound to resent such interference. The attitude of Bostonian Democrats to the Republican council is akin to that of British Laborites toward the conservative House of Lords. One may condemn Curley's methods. But was the Democrat who offered the bribes more blameworthy than the Republicans who accepted them? Once again, it is seen that the Massachusetts' reorganization was not dominated by the governor. The composition of the Commission on Administration and Finance, the powers of the council, and the terms of the department heads, all detract from the governor's control. Lowden, Smith, and Byrd would assuredly not have assented to such limitations had they been the initiators in Massachusetts.

#### THE GOVERNOR'S PATRONAGE

A questionable feature of politics in many states has been the placing of party-workers in administrative positions. Opponents of reorganization objected that to increase the gover-

nor's appointing power would nourish the spoils system. That the danger still exists, all would admit. But some might urge that it is mitigated in two ways. First, the number of office-seekers is always greater than the number of available jobs. The governor appoints one, and disappoints several. Second, the quantity of patronage may not be as great as is supposed. Jobs are frequently given to individuals suggested by powerful political leaders whom the governor wishes to conciliate. The influence that won the appointment is usually sufficient to preserve it. "So-and-so is Senator A's man. He can't be touched." Some governors genuinely dislike the irksome task of satisfying a horde of applicants. They may even welcome a civil service system as a relief from the pressures which tug at the newly elected. Others may indorse civil service with the Machiavelian motive that to appear honest is "good politics." Others again will first seize the chance of making their appointments and will then institute civil service in order to maintain their partisans in office. It is interesting that in Tennessee, Arkansas, and Michigan, all of which adopted civil service laws in 1937, the governors gave the measure their support.

What have been the actual results? Did reorganization fulfil the predictions of the prophets of gloom? In New York it failed to do so. But this is largely because the same party has held the governorship ever since reorganization. Smith appointed excellent department heads, most of whom were retained by his successors. New York, further, already had a civil service law guarding the great bulk of the state's employees. Moreover, this state contains at least one powerful civil service association which acts as a "watchdog" of the merit system and preserves it from attack. The courts, too, have shown a co-operative attitude by their interpretation of the constitution. An amendment reads: "Appointments and promotions in the civil service of the State, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, *so far as practicable*, by examinations, which, *so far as practicable*, shall be competi-

tive."<sup>49</sup> The qualifying phrase, which might wreck the whole system, has been construed favorably to civil service. Thus, in the eleven years that have elapsed since the state was reorganized, a good tradition has been founded. The test will come when the Republicans reoccupy the executive branch. Will present department heads be retained, and will there be an assault on the merit system?

In Massachusetts, until 1931, Republican governors usually reappointed incumbents and left the civil service commission alone. Ely, Curley, and Hurley have broken the tradition.<sup>50</sup> Although some of the old department heads were continued in office, many have been dismissed. Civil service requirements were evaded by the device of hiring "temporary" workers who did not have to pass examinations. Republican aristocrats held up their hands in horror. But the Democrats were overthrowing a dynasty; and, right or wrong, they could not accomplish political revolution by observing the accepted rules. The Irish Catholics of Democratic allegiance were asserting themselves against Protestant Republicans of English ancestry. Both sides were entangled in a web of inherited prejudices.

The reorganization of Virginia did not lead to an orgy of spoils. Byrd actually said: "I seek no additional power for myself. To the contrary, an analysis of the recommendations made will disclose that my patronage will be substantially reduced."<sup>51</sup> Furthermore, he asserted, there was no need to fear that the proposals would give the governor too much power, for the state constitution prohibited a governor from two successive terms.<sup>52</sup> He omitted to mention that it did not prohibit a former governor from retaining influence. Actually, Byrd, while governor, acquired control of the Democratic machine—for machines can rest on other foundations than the distribu-

<sup>49</sup> Constitution of New York, Art. V, sec. 6. (*Italics mine.*)

<sup>50</sup> Louis M. Lyons, "Jim Curley and His Gang," *Nation*, April 29, 1936, pp. 540-42, gives an unsympathetic account of Curley.

<sup>51</sup> *Address to the General Assembly*, extra session, March 16, 1927, p. 12.

<sup>52</sup> *Ibid.*, February 3, 1926, p. 3.



tion of jobs—and kept control for some years. He chose his successor, Governor Pollard; and in 1933, when President Roosevelt appointed Senator Swanson of Virginia to be Secretary of the Navy, Byrd was in turn selected by Pollard to fill the vacancy in the United States Senate. Of late, however, Byrd has been losing influence because of his hostility to the President and the New Deal. In 1937 he had to acquiesce in the election of a governor whom he did not favor. Patronage has been relatively less prevalent here than in many other states; for the tradition of security is very strong, despite the absence of a civil service law. This applies to department heads as well as their subordinates. Byrd, however, chose some new department heads, but they were good appointments. Mr. Frank Bane, for instance, was created commissioner of public welfare, although he had favored Byrd's rival in the primary campaign for the governorship. Later Bane was appointed executive director of the new Social Security Board established by the New Deal.

It is Illinois, which, even more than Massachusetts, exhibits the risks of strengthening the governor. Len Small was chief executive from 1921 to 1928. He replaced Lowden's department heads with his own men, although several of the division chiefs were retained for the sake of continuity.<sup>53</sup> At the first legislative session he showed his true colors. His political allies were Mayor Thompson of Chicago and Fred Lundin, who together controlled the Republican machine in the metropolis. Various measures were introduced with a view to spoils.<sup>54</sup> Since the session was limited to a duration of six months, most bills were not thrown in the hopper until May or June, as Small wanted his proposals rushed through without discussion in the last-minute jam. In the first week of June, Thompson

<sup>53</sup> A. E. Buck, "The Civil Administrative System in Illinois," *National Municipal Review*, XI (November, 1922), 362.

<sup>54</sup> For this whole account the writer is indebted to an article by Shelby M. Singleton, "The Illinois Legislative Session of 1921," *American Political Science Review*, XV, No. 4 (1921), 582 ff.

and Lundin came to Springfield, and, with Small, tried to win legislative support. Their most cherished schemes were a tax commission bill which would give the state complete control over local assessors and authority to reassess property without appeal; a Chicago traction bill, placing the street railways and the employees under the control of the city (i.e., of Thompson); an amendment to the civil service act removing nearly two thousand employees from its protection; and a bill to create a prohibition enforcement department with a large staff exempt from civil service. The methods the triumvirate employed to secure acceptance of their bills were extremely questionable. State officials lobbied with legislators, even on the floor of the legislature.<sup>55</sup> One representative said openly that he had been offered a favorable decision in a case then pending before the public utilities commission, if he would vote for the anti-civil service bill. Eventually, there was revolt against these tactics. All four measures were defeated. Small succeeded, however, in winning a "ripper" bill which repealed the public utilities law of 1919, abolished the commission appointed by Lowden, and then re-enacted much of what had been repealed. The new agency was to be called the Illinois Commerce Commission, and its employees were to be exempt from civil service. Another act established a state highways system and conferred the task on the department of public works and buildings. About 450 positions were thus placed at the disposal of the spoilsmen.

Such a governor would have behaved in like manner even without reorganization. Small would still have been Small. It is agreed, at any rate, that power should not be concentrated in such hands. Although reorganization did not justify all the forebodings of its critics, it leaves room for some serious doubts. The antics of Curley would have been far more damaging but for the various checks described. In New York government has remained on a high level. Will it remain there when the pendulum swings to the opposite party? Virginia has been fairly

<sup>55</sup> *Assembly Bulletin*, VI (1922), 6; *ibid.*, X (1926), 7, quoted in Leonard D. White, *op. cit.*, pp. 434-35.

well administered; yet for some years the governor of the reorganization dominated the state. In Illinois, to say the least, the reforms did not prevent corruption. Reorganization, in a word, offered no gilt-edged security.

Can the merits and demerits revealed in the last two chapters be summarized? To pass judgment at this point would be premature; the governor needs still to be considered in his function as chief legislator, since political necessities in the legislature may react upon his work as chief executive. The governor, after all, is a Janus-like figure, facing two ways. In certain states he was emerging as legislative leader even prior to reorganization, and in most cases it was through this leadership that reorganization was achieved. Thanks to his legislative activities the governor's executive power has been strengthened. Other factors, developing simultaneously with reorganization, yet unconnected with it, have correspondingly enhanced his position as chief legislator. We have observed one face of this Janus; we must now look at the other.

## CHAPTER IX

### AFTER REORGANIZATION: THE GOVERNOR AS CHIEF LEGISLATOR

IT IS natural to ask whether the reorganization of the administrative system had any effect on the governor's legislative leadership. Did the increase of his power in one branch of the government add to his influence in the other? That there is a connection between executive organization and legislative leadership was clearly brought out by the Illinois report of 1915:

With the existing lack of efficient executive organization, both the Governor and the General Assembly fail to receive proper information and advice as to needed legislation. . . . No machinery has been provided by which the recommendations and proposals for legislation from the numerous list of officers, boards and commissions can be carefully weighed and sifted by officials charged with responsibility over a large field of administration. Conflicting measures are often proposed by different State authorities. . . . As a result there is no harmonious legislative policy even formulated.<sup>1</sup>

Now that the governor was more of a master in his own house was he better prepared for the role of chief legislator? The governor can lead the legislature only if it does not, or cannot, lead itself.

The governor represents the state as a whole, a factor even more important now than in the first decade of the century. Owing to the improvement in the mediums of communication, the governor stands out in the public eye and can always command state-wide attention for his actions and utterances. In recent years the radio has given him direct entry into the homes of a large section of his constituents. In almost any state scores of persons come with complaints or suggestions to the governor

<sup>1</sup> *Report of the Efficiency and Economy Committee, 1915* (Chicago: Windermere Press, 1915), p. 23.

rather than to the department head concerned. The writer remembers waiting in an anteroom to see a certain governor, when an aged woman, poorly dressed, came up to a secretary and asked if she could talk to the chief executive. It transpired that a pension which she was receiving from the state was to be taken away because she had remarried, and the secretary directed her to the appropriate department. The significance is that her thought was to come to the governor. It is the governor, indeed, whom people have heard of and know. Contrast the relative unfamiliarity of the people with the leaders of the legislature. The majority of voters have at least heard of the governor's name or can recognize his picture in the newspapers. How many can tell even the names of the lieutenant-governor, the speaker, and the majority leaders in the two houses?

The power to recommend has been extended in scope by the executive budget and the consolidation of agencies. Administrative agencies frequently prepare and sponsor bills that concern their own work. Prior to reorganization an agency virtually independent of the governor would take its request directly to the legislature. Sometimes, it might first seek his approval in view of his possessing the veto, but more frequently it relied on its own political influence. A member of the Massachusetts Minimum Wage Commission before reorganization told the writer that this agency secured its appropriations from the legislature and proposed legislation without ever consulting the governor. Today the picture is changed. The governor will generally insist that department heads do not ask the legislature for more money than he has allowed them in his budget.<sup>2</sup> Further, if there is any legislation which a department favors, it will usually be submitted for the governor's approval. In Virginia one governor announced at a cabinet meeting that he would like to be consulted on bills which a department planned to introduce. The result has been a marked increase in the number of "administration bills." The governor recommends the desired legislation in his own message. In

<sup>2</sup> See chap. vii for some exceptions.

Massachusetts, likewise, the Commission on Administration and Finance and other departments give their proposals to the governor, who incorporates them among his own. In New York the same control is exercised. Even departments like education and social welfare, supposedly semi-independent, seek the governor's support for their measures. Once a governor has indorsed a bill, the department head is usually expected to refrain from conducting his own lobby among the legislators. Governors object to their subordinates' building up independent influence. In California the department heads conducted lobbies during the administration of Governor Rolph. His successor, Governor Merriam, threatened to fire any department head who did so, which checked, although it did not entirely end, the practice. The state of Washington, however, had a governor in 1933 who failed to prevent one department head from direct negotiations with legislators. This officer, the director of public service, was calling a halt to the laissez faire which the public utilities had enjoyed under Hartley. Eager to increase his statutory powers, he personally approached members of the legislature at the 1933 session. He even sought to form his own bloc which would maneuver and obstruct other legislation until his bills were passed. The speaker resented this interference and sharply criticized the director's tactics at a committee hearing. He further told the legislators concerned that he would not allow them to interfere with legislative procedure at the bidding of a department head. This instance shows the need for effective control by the governor. The department heads have the right to speak on behalf of their measures at committee hearings. To go beyond this is to infringe on the governor's prerogative.

The recommending power has been further facilitated by the creation of agencies which help the governor in preparing his program. If his proposals are to have merit, they must be based on the careful scientific study which only a research bureau can supply. As yet, the governors of most states still formulate their recommendations in haphazard fashion, especially

when the governor is newly elected. Usually about two months intervene between the dates of election and inauguration, and, since the legislative session begins almost immediately, this period is quite insufficient. Al Smith has described the predicament with sympathetic understanding:

A man is nominated for Governor. He goes through a hard, vigorous campaign. The state of New York is big. Its interests are diversified. Its large cities are far apart. It means work, night and day, for a month and a half at least. After election he is physically worn out and must rest. That finished, he must prepare for the inauguration on the first of the following January. The Christmas holidays intervene. He owes a duty to his family at that season of the year. He must prepare his annual message to the legislature by the first of January. He soon finds himself reduced to the condition he was in the day after election.<sup>3</sup>

Since reorganization, however, much of the preparation has already been completed for the governor before he comes into office. It was seen above<sup>4</sup> that budget estimates are drawn up during July to December of the year prior to that in which the budget is submitted. Thus, when the new governor comes into office, an almost completed draft is offered for his approval, and his wishes can be incorporated by only a few alterations. In many states, too, the governor has other assistants besides budget officers to help him in making his recommendations. The chief executive in New York has a legal counsel whom he may use for conducting research and for translating his proposals into the form of a statute. In Virginia the governor's office has a division of statutory research and bill-drafting—an open admission of the legislative influence which the governor now enjoys. In another state, which lacked such facilities, a governor created an agency temporarily for his use. Governor Tingley of New Mexico, immediately after his election in November, 1934, called an advisory meeting of over a hundred leading citizens from various sections of the state. Divided into functional groups—cattle-ranchers, bankers, trade-union-

<sup>3</sup> Alfred E. Smith, *Up to Now: An Autobiography* (New York: Viking Press, 1929), p. 262.

<sup>4</sup> See chap. vii.

ists, etc.—they drew up a program of legislation. Because no legislators had been appointed to this body, it met with hostility from the legislature, who felt that its prerogatives were being usurped. But, as a result of this preparation, legislative work proceeded with unusual celerity. As the session is limited in New Mexico to sixty days, the legislature had in previous years stopped the clocks on the sixtieth day and continued its deliberations. In 1935, however, they were able to finish in less than fifty days.<sup>5</sup>

The veto is as potent an element in the governor's leadership as ever. Professor Crawford has given the data on the number of vetoes in New York, Illinois, and Wisconsin, for selected years. The governors of New York in the period 1916-29 vetoed 19 per cent of the total bills passed; governors of Illinois killed 3 per cent in 1919 and 2 per cent in 1921; whilst the chief executive in Wisconsin nullified 2 per cent in 1919 and 3 per cent in 1921.<sup>6</sup> The striking difference between the figures in the first state and the latter two is explained by the party conflicts between the legislative and executive branches. But the effects of this power are more far-reaching than the mere number of vetoes indicates. Its indirect influence is incalculable. Both legislators and administrative agencies must come to terms with the governor because of the threat which he holds over them. Josiah Quincy expressed the truth that "the potential veto shapes legislative action so constantly that the actual veto does not have to be used very frequently in practice."<sup>7</sup> Indeed, in Virginia and Massachusetts vetoes have decreased because the governor has been accorded the power to

<sup>5</sup> See Clyde Tingley, "Message to the Legislature," January 8, 1935. The following quotation reveals his attitude: "I am not assuming to advance my views as against yours, as the responsibility for the enactment of proper legislation is as much yours as mine."

<sup>6</sup> F. G. Crawford, *State Government* (New York: Henry Holt & Co., 1931), pp. 118-19.

<sup>7</sup> *Debates in the Massachusetts Constitutional Convention of 1917-8* (4 vols.; Boston: Wright & Potter Printing Co., 1918-20), III, 891. Report of the Committee on the Executive.



suggest alterations in bills passed by the legislature. If the legislature acquiesces—and it usually does—the governor has no need to veto. Governor Byrd, in an extra and two regular sessions, returned forty-two measures with his recommendations, all of which were accepted.<sup>8</sup> Massachusetts in 1917 witnessed an unusually frank manifestation of the potential veto. While a measure was still pending before the legislature, Governor McCall sent a message in which he objected to a certain provision. He explained that he had conferred with the president of the senate and the speaker of the house, and was taking this step only with their approval in order to avoid the necessity of a veto.<sup>9</sup> It is certainly preferable that the governor should express his views in this open fashion rather than conduct private negotiations for which he could not be held responsible.

It is this potential veto which leads department heads to seek the governor's approval. Conversely, it also induces many legislators to sound out his wishes before they throw their own proposals in the hopper. In a certain state, according to the official who had the duty of bill-drafting, a legislator is more likely to secure passage of his measures if he has first approached the governor. Some members of the legislature have their bills written secretly and introduce them as a surprise. Generally, these are less likely to be adopted. In New York a department head informed the writer that legislators usually consult him before proposing a bill that affects his department. If he approves, then the governor will support the bill. If he disapproves, he writes memorandums to the chairmen of the appropriate legislative committees and to the governor's legal counsel, stating his objections. There is little chance of such a bill passing the legislature. The committee chairmen know that, if the department head disapproves, the governor will

<sup>8</sup> George W. Spicer, "From Political Chief to Administrative Chief" in *Essays on Governmental Administration*, eds. M. E. Dimock and C. G. Haines (Baltimore: Johns Hopkins Press, 1935), p. 100.

<sup>9</sup> *Debates, Massachusetts Convention, 1917-8*, III, 953.

almost certainly veto. Hence they will not even report the measure out of committee. Indeed, in New York it is customary for the governor to call in department heads before signing bills that concern them. On one occasion Al Smith had to consider some bills dealing with education. The board of education expressly asked the governor to exercise his veto. Smith, however, decided also to consult the commissioner of education. This officer preferred that the measures be approved. Satisfied by the commissioner's reasoning, the governor appended his signature. This case clearly indicates the influence of the governor even over agencies supposedly independent of his authority.

California supplies yet another instance of the potential veto.<sup>10</sup> This state has adopted what is known as the "bifurcated" session. The legislators meet for a few weeks, introduce their bills, and then adjourn. During the interval before re-assembling they are supposed to study the proposed legislation. After reconvening they cannot introduce new bills without special consent. In order that they could make proposals late in the session, some members would introduce a "bill" early, consisting merely of a title and nothing more. Afterward they would add whatever detailed clauses they desired. This practice of "skeleton" bills defeated the main purpose of the bifurcated session. Governor Young, who had presided over the senate and was acquainted with this device, made it known at the beginning of his term that he would veto any bill which began its legislative life in skeleton form. There were few such bills while he was governor.<sup>11</sup>

Party leadership is still a factor in the governor's legislative leadership, the importance of which varies considerably from state to state. In Virginia, there is no conflict between parties; but in the struggles between sections of the one party the gov-

<sup>10</sup> See J. A. C. Grant, "The Introduction of Bills," in "Our State Legislators," ed. W. Brooke Graves, *Annals of the American Academy of Political and Social Science*, CXCIV (January, 1938), 118 ff.

<sup>11</sup> *Ibid.* There has been a recrudescence under succeeding governors.

ernor exercises factional leadership. In Massachusetts, ever since the Democrats challenged the Republican ascendancy, party power has attained deeper significance. The general court, like the council, normally contains a Republican majority because of gerrymandering in the electoral districts. A Democratic governor can count on his fellow-Democrats but must needs secure some Republican votes. This can also be seen in New York, where the conflict between governor and legislature has been fought on party lines. Usually, the Democratic governor is supported by all the Democrats and must attract Republican votes by compromise. At one time, however, a governor lost Democratic votes through the obtrusion of religious factors. The Catholic church opposed ratification of the federal child labor amendment, and, when the proposal to ratify was before the legislature, some Irish Catholics of the Democratic party voted against the wishes of Governor Lehman. In Illinois, Governor Horner has been embarrassed by the split in Democratic ranks during the last three years. This has induced him to seek the support of downstate Republican legislators in fighting the Chicago machine. In this way have divisions in the legislature cut across party lines. In certain states, however, the governor's party leadership means little. Frequently, in Montana, California, or Oregon one hears repeated, "The party label doesn't count in state politics." Those acquainted with the state governments attributed this to the effect of nomination by the direct primary. In the days when candidates were chosen at party conventions, stricter party discipline was the rule. Today, candidates with little or no party allegiance can win the nomination in the primary and, once elected to the legislature, behave as independents.

Even when party control is absent, patronage may win legislative leadership. It is, of course, possible to wield party power without employing patronage. But it is also possible to build up through patronage a personal bloc distinct from a regular party organization. In Montana, for example, Governor Cooney called a special session in December, 1933, at which he tried

to secure passage of his measures by this means. Some legislators were not averse to receiving government jobs themselves. Actually, over ten were taken into the administration after the session ended. In return they voted for the governor's bills.

California governors, too, have employed patronage to their legislative advantage, although since 1934 the adoption of the civil service amendment has somewhat dried up this wellspring of leadership. The waterfront of San Francisco is owned not by the city but by the state and is administered by a large staff under a commission of three, appointed by the governor. San Franciscan legislators have repeatedly introduced bills to restore the waterfront to the city; but the governors have opposed because they would lose patronage. One such bill passed both houses and was vetoed by Governor Richardson with the comment: "Do you think I want to give the waterfront to the city politicians?" His motives also influenced Governor Rolph, who, when he became chief executive of the state, opposed the measure which he had formerly advocated as mayor of the city; whilst in the 1934 campaign contributions were levied from the commission's staff to aid the Republican governor in his fight against Upton Sinclair and the "Epics."

Patronage has similarly been used by recent Democratic governors in Massachusetts. Near the beginning of his first legislative session Governor Ely secured passage of a bill appropriating money for a public works program. As this was to be emergency employment, positions were exempt from the civil service law. Individual legislators were then allowed to name the recipients of jobs in return for a promise to support later administration measures. This bartering of votes for jobs was repeated under the next governor, when still more temporary agencies were created. Illinois has experienced similar attempts. Governor Small sought to extend his patronage at the 1921 session in the manner already described.<sup>12</sup> Highways also provided plenty of material for machine-building. The governor's ambitious program of constructing roads through the

<sup>12</sup> See chaps. vii and viii.

length and breadth of Illinois brought him the support of many legislators whose localities were benefited. In recent times the split in the Democratic party has accentuated the struggle for votes. The civil service commission, with its inadequate appropriation, has desisted from holding new examinations. Posts are filled by "temporary" employees, whose tenure is undisturbed by the commission.

Although instances of patronage used to "buy" votes can still be cited, the long-run trend may see the diminishing influence of this factor. Quite clearly, its importance will decrease in inverse ratio to the spread of civil service. The creation of temporary agencies since 1931 has stimulated a recrudescence of spoils politics in some states. The year 1937, however, witnessed a revived interest in the merit system, and, if the unemployment problem becomes less acute, there will be less need for government to supply jobs. In any case patronage is a two-edged weapon, which some governors dislike to handle. It is, therefore, possible—one would be rash to put it more strongly—that governors in course of time may exercise their legislative leadership by the other means at their command, avoiding a practice which is administratively, and often politically, unwise.

Another element is the governor's power to summon special sessions of the legislature.<sup>13</sup> When the governor takes the initiative of proposing the subjects for future legislation, he centers public attention on his program and makes it harder for legislators to evade the issue. In about half the states the legislature at special sessions can consider no other measures than those for which it was called together. Recent years have seen frequent use of this device, particularly in states where constitutional restrictions limit regular sessions to sixty days every two years. The economic depression has increased the occasions for emergency legislation. At times, indeed, the governor may call a special session to reconsider a bill defeated in regular session.

<sup>13</sup> See John M. Mathews, *American State Government* (New York: Appleton & Co., 1926), pp. 218-20.

Thus Horner of Illinois, after his victory in the primaries of 1936, summoned the legislature to adopt permanent registration of voters which the opposing Democratic faction had killed a couple of months before. At other times, a regular session, if wearily protracted with scant results, may adjourn on the tacit understanding that the governor will soon call a special session to treat of a few important issues. This power, therefore, offers fertile soil for gubernatorial initiative. One may recognize it as distant kin to the British prime minister's power of formulating a legislative program and allocating time for parliamentary debates.

The governor, moreover, is increasing his grip on the legislative machinery. A chief executive who desires the leading role in the legislative play will see to it that no potential rival can "steal the show." He must support his own candidates for the key positions of speaker, majority leader, etc., and insure that they are elected. At the 1921 session of Illinois, Small and Thompson procured the speaker's office for one of their adherents, who used his powers on the governor's behalf.<sup>14</sup> The results of the session left in the minds of many legislators the conviction that the house rules should be changed and the speaker's powers curtailed. It would be interesting to speculate whether the governor's ability to lead the legislature depends on the speaker's strength or weakness. If the governor can place "his" man in the speakership, and if the speaker's powers are strong, the governor's path is clear. But, if an independent person occupies the position, the governor must counter with an equal. Has the president's legislative leadership been affected by the curtailing of the speaker's powers since the days of "Czar" Cannon? The same point would apply to the governor's relation with the lieutenant-governor, who presides in the senate. When Franklin D. Roosevelt was governor of New York and Herbert Lehman lieutenant-governor, their political alliance greatly facilitated the governor's legis-

<sup>14</sup> See Shelby M. Singleton, "The Illinois Legislative Session of 1921," *American Political Science Review*, XV, No. 4 (November, 1921), 582-91.

lative authority. The governor may also influence assignments to the principal committees, if the presiding officers of each house, who determine appointments, are his followers. In one state the governor has acquired by usage the right to name the members of three senatorial committees—finance, revenues and taxation, and governmental efficiency. A senator eager to serve on one of these asked the lieutenant-governor to give him the assignment. He was informed that he must first approach the governor, *since nominations to these committees were made only with his consent*. The senator then put his request to the chief executive and was duly appointed. From one point of view, this is an “interference” not to be tolerated. From the other, if the governor is going to be legislative leader, such accretions to his legal powers are unavoidable.

Nor should the governor's own experience in the legislature be overlooked. Some of the most effective governors have been drawn from legislative ranks. Governor Byrd referred in his inaugural address to his “service of ten years in the Senate”;<sup>15</sup> and Young of California said: “An experience of eighteen years in legislative work, with fourteen years of that time spent as presiding officer of one or the other of your two houses, has possibly enabled me to understand your problems better and to appreciate your work more keenly than I could have done had this privilege not been mine.”<sup>16</sup> In Illinois, Lowden had served in Congress prior to his election as governor. In New York the three most recent Democratic governors have all had intimate knowledge of the legislature. Al Smith remarks: “It is needless to say that the experience of my twelve years in the legislature was of inestimable benefit to me when I became governor, particularly the knowledge I had acquired of the state's fiscal system and the appropriation and handling of state funds.”<sup>17</sup> His successor, Franklin Roosevelt, had previ-

<sup>15</sup> *Inaugural Address, February 1, 1926* (Senate Doc. No. 6), p. 16.

<sup>16</sup> C. C. Young, *Second Biennial Message* (Sacramento: California State Printing Office, 1931), p. 57.

<sup>17</sup> *Op. cit.*, p. 136.

ously been a member of the state senate from 1910 to 1913, and Governor Lehman was lieutenant-governor during the four years 1929-32. All these governors, without exception, were outstanding legislative leaders, who had learned the arts of political compromise and the niceties of handling men. Even in New York, where governors found it hard to carry their measures through the Republican-controlled legislature, they were at least able to discern and forestall the maneuvers that were attempted against them. It should not be assumed, however, that all successful governors have had legislative experience. Some have risen to the office from a career of purely executive positions. But no one would deny that, since the governor must perforce deal with the legislature, a previous participation in its work will help him understand its psychology.

If the governor provides leadership in legislation, presumably he fills the need better than anyone else. The governor may exercise his influence by default. The question naturally arises: "What are the deficiencies of the legislature which may prevent it from leading itself?"<sup>18</sup> Instead of being infused from without, can the leadership spring from within? As an alternative source of leadership the legislature suffers from the disability that the governor is a full-time official, whereas legislators are part-time. Compared with him they are amateurs. This applies particularly to the numerous states whose regular sessions recur biennially and are limited to a couple of months. In such spasmodic visits to the capitol how deeply can the legislator gain acquaintance with governmental problems? But the generalization applies less to the larger industrialized states, whose sessions are more frequent and lengthy. In Massachusetts, New York, and Illinois, the legislature convenes every January and is quite likely to remain in session for five or six months. During this period there are continual contacts between legislators and the governor or his department heads. Indeed, in one of these states a department head complained

<sup>18</sup> See Walter F. Dodd, *State Government* (2d ed.; New York: Century Co., 1928), pp. 208 ff.



that members of the legislature come to his office far too much, inquiring and probing!<sup>19</sup> There is thus a chance in some states that legislating may be a full-time profession, especially if the member has independent means. It is doubtful whether this can ever become the case in certain states of the West. In Montana, for instance, the writer was told by a governor who had previously served in the state senate that many legislators are poorly informed both about state problems and about legislative procedure. Their occupation may be that of "cowboy, farmer, or stockman," and they "don't know what it's all about." Some have never even read the state constitution and cannot propose a motion in the proper way.

Another cause contributing to the amateurish character of the legislator's profession is the turnover of personnel. It is the flux in legislative membership which perpetuates inexperience. Professor Hyneman has studied the turnover in the legislatures of ten states for the period 1925-35.<sup>20</sup> He discovered that during these years 39.6 of the legislators in the ten states were serving first terms in the lower house, 20.3 their first terms in the upper. Altogether, in the lower house 63.4 were serving either their first or second terms; in the upper, 39.6. The difference between the figures for the two houses is, of course, chiefly explained by the greater length of the senatorial terms and by their overlapping. At landslide elections the difficulty is intensified. The state of Washington in 1931 had 41 Republicans in its senate of 42, and 90 in its house of 98. The 1933 and 1935 elections swung the balance as far to the other side. The 1935 senate had 37 Democrats to 9 Republicans; the house had 91 as against 8.<sup>21</sup> The speaker of the Washington house in 1933 described to the writer his trouble in organizing the committees: only five of the Democrats had any previous legislative experi-

<sup>19</sup> Interview with the writer.

<sup>20</sup> Charles S. Hyneman, "Tenure and Turnover of Legislative Personnel," *Annals, CXCV* (January, 1938), 21-31.

<sup>21</sup> Data compiled by the writer from the Washington legislative manuals of 1931 and 1935.

ence, and he himself had served only one other term. Likewise in Oregon, with its assembly of sixty members, a former speaker complained that in each session at least 50 per cent are newcomers. It takes time to learn the various gambits, moves, and exchanges of the legislative chessboard. The intricacies of procedure and the technicalities of debate offer a deterrent to the uninitiated. Most legislators must serve two sessions before they can show their usefulness. The element of turnover, however, is not entirely harmful. Fresh blood prevents inertia of will and petrification of ideas. The new members may compensate for inexperience by enthusiasm. For the purposes of effective organization an average turnover of more than 40 per cent is excessively high; but the new arrivals should be sufficiently numerous to make their point of view felt. Lack of continuity is attendant on these changes in personnel. A problem may arise at one session, and the legislature will appoint an interim committee to investigate. Often the body to which they report will be very different in composition from that which appointed them. Perhaps those most interested in the topic are no longer members; and, not surprisingly, the report will be "pigeonholed." On many occasions the campaign for a bill must be refought, because the old adherents have disappeared and the newly elected must be won to the cause.

The internal organization of the legislatures may further diminish their effectiveness. Any legislature, if it is to supply leadership under democratic institutions, must perform two functions. First, prior to the session, a survey should be made of the total needs of the community, and a coherent program be drawn up covering as many of those needs as possible. Second, during the session, some supervisory committee ought to watch over the working of other committees, allocate debating time to respective bills, and generally organize legislative activities. It is best that both functions be performed by the same committee, for those who devise a program are likely to be the most energetic in advocating it. Leadership, in other words, must come from a single body whose functions are synoptic

and comprehensive; it cannot come from a multiplicity of committees. Overhead co-ordinating is quite as important in legislative organization as in administration. A merit of the parliamentary system is that the cabinet exercises the two functions. Before the session, it considers the general condition of the nation and prepares a consistent program in order to satisfy such demands as political expediency dictates. During the session, it arranges legislative business and gives some unity of purpose to the separate activities. American legislative organization has to date largely suffered from the lack of a single committee to take this synoptic view both before and during the session. Neither function has been adequately performed. It is true that there is some advance preparation by interim committees. But each of these is set to tackle an isolated problem with little consideration of the state as a whole.<sup>22</sup> It is also true that rules and finance committees partially fulfil the need of unified planning during the session. Finance committees, however, survey state needs primarily from the aspect of cost, and only secondarily from that of service; whilst rules committees tend to be most effective in guiding the rush of legislation at the end of the session but fail to provide adequate planning from the beginning. At times the leaders of the majority party may act as an unofficial "steering" committee. But party cohesion is not strong in all legislatures, and it is better to place this duty on a recognized committee which is officially responsible. *With these qualifications, therefore, the legislatures are deficient in organization for supplying their own leadership.*

Psychological considerations, too, work to the disadvantage of the legislature. One man is better able to lead than an assembly of men. The people at large like to have issues represented by personalities, and the human appeal is a potent force in the processes of government. The leader and the symbol are as necessary to democracy as they are to dictatorship. One man can capture a nation's imagination where an assembly cannot; as a Republican state senator of New York admitted to the

<sup>22</sup> The development of the legislative council will be discussed below.

writer: "People like the one-man show." Democratic institutions, though they put a premium on calm rationality, exist to serve human beings who do not live by reason alone.

But these disadvantages do not tell the whole story. The legislatures have their own merits and may themselves supply leadership. Despite the active share of the chief executive in legislating, this role is still of sufficiently recent origin for the legislature to feel resentment. The charge that the legislature is a mere "rubber stamp" may provoke a reassertion of its prerogatives; and, being an independent branch with its own constitutional authorization, it has powerful means of resistance. Although *de facto* the governor has greatly increased his legislative influence in the last forty years, it has not quite hardened enough into a tradition to place him above challenge. His responsibility for legislation is not yet as clearly recognized and accepted as that of a prime minister. Against a prime minister initiating laws any charge of usurpation, of interfering with the rights of parliament, would be absurd. But against a governor the legislator can still bring the accusation without sounding ridiculous. The legislature may react in opposition to some of the devices by which the governor exercises his leadership. The cry of "interference" is an easy one to raise. Governors may descend to questionable practices in order to promote enactment of their bills, and leadership shades into "domination." In Illinois the opposition of legislators to the methods used by Governor Small at the 1921 session was a healthy symptom. The same state, indeed, has a saying that the first regular session, at the beginning of the governor's four-year term, is "the governor's session"; the second, at the expiration of half his term, is "the members' session." A governor's leadership does not always increase proportionately to his length of tenure, and his influence may diminish after the first session. Familiarity with the man breeds contempt; there is a revolt against "domination"; patronage is exhausted. These and other factors may counterbalance the chief executive's gain in experience.

Some are dubious whether the governor represents the whole

state. They argue that, although he is chosen at a state-wide election, he really represents only those who voted for him. He is the candidate of the majority party, perhaps of one faction in it. Democratic theory, it is urged, requires that minorities and localities be accorded consideration. The "general will" is a myth; and the people are best represented when their legislature is a mosaic of all the special interests. Indeed, it is only the legislature which can fully represent them. The sectional diversities, the functional groups, the economic classes, cannot all find a place in the executive office. In the legislature there is greater probability that they can, and will. This is peculiarly important in the United States with its profound divergences of geographic regions, racial origins, and economic status. Within most states, such divergences exist, and one of the revelations to the visitor is to learn of the local variations in what he had assumed to be a homogeneous unit. Consider the disparity in New York between Republican farmers and city Democrats; in Louisiana between downstate French Catholics and upstate Anglo-Saxon Protestants; in New Mexico between the "Anglos" of the east and the Spanish-Americans of the west; in Illinois between the metropolitan area of Chicago and downstate ruralism; in California between San Francisco and Los Angeles, and between the two cities combined and the agricultural population; in Massachusetts between the recently emigrated Irish of Boston and the older inhabitants of English ancestry. All these groups need to be represented, or they feel that the government is not "theirs." In the words of a former speaker of the state of Washington, the legislature should be a cross-section or microcosm of the community. Each interest should be represented, so that the whole body may act as a general public opinion in considering legislation for each special group. This produces the "composite mind" or "collective judgment" on governmental problems. There may be an "ideal legislature" that does not contain an "ideal legislator." The legislature can provide this microcosmic public opinion where the governor cannot.

Despite the flux in legislative membership, there are always a few "old hands" who know how to manage affairs. It is usually a small nucleus of key men that dominates the session. Their work may be quieter and they may be less in the public eye than the governor, but they are providing leadership all the same. In Montana, for instance, although there are numerous members who "don't know what it's all about," there are always a few lawyers who are masters of the procedure. They guide the rest. This, in turn, may be undesirable. A small clique within the legislature can "dominate" just as much as any governor. Those acquainted with American institutions are well aware of the legislative oligarchies which have controlled the sessions through private caucus.<sup>23</sup> However, if forced to choose, legislators might prefer domination from within rather than from without, and they must have some body smaller than the whole group to take the initiative.

At the same time the legislature itself may contain a single outstanding personality to supply direction. Leadership will come from wherever the leaders are; and they are not always in the governor's office. In the first year of the executive budget in Massachusetts it was not Governor Coolidge but Representative Young who attracted public attention.<sup>24</sup> Events in the state of Washington yield a still more striking example of effective legislative organization, the leadership coming from Speaker George F. Yantis.<sup>25</sup> Toward the end of 1932 the Democrats, victorious in the November election, held a pre-session caucus at which they chose their officers, and Yantis, knowing in advance that he was to be speaker, set to work preparing a program. The governor-elect, Clarence D. Martin, inquired what plans he had in view, and a meeting was arranged at which Yantis outlined his program to Martin and his political

<sup>23</sup> See, e.g., R. McInnes, "Legislative Oligarchy Handicaps New York Governors," *National Municipal Review*, XXIII (May, 1934), 252 ff.

<sup>24</sup> See chap. vi.

<sup>25</sup> For the following account the writer is indebted to members of the state legislative and executive branches.

advisers. An agreement was reached as to what measures would be proposed. When the session began, in January, 1933, the legislature was organized into committees by the second day—thanks to the presession caucus—and was at work by the third. There was considerable opposition to the tax measures proposed, for Yantis was taking a middle path which displeased the left-wing radicals elected largely from Seattle and the twenty-odd surviving Republicans on the right wing. He found that the way to exercise leadership was by keeping the legislators busy. He would submit bills one after the other. At times he took the floor himself and fought for his measures—a risky proceeding for the speaker, who may lose control of the house if he becomes too partisan.

The governor was no leader. He had virtually no program of his own and, under pressure of the business interests, was not averse to letting down the legislators of his own party. This was seen at the special session which he summoned late in 1933, after the repeal of the Eighteenth Amendment, to enact a liquor law. Prior to this session he had a conference with Yantis, told him that he had no program, and would leave the responsibility to him. Yantis and others drafted a liquor act, which aroused heated controversy at the session. Over one hundred amendments were offered from the floor. Eventually it was passed by both houses and came to the governor for signature. The vested interests hammered at Martin, who decided to veto it. He called Yantis to his office and, with several others gathered there, announced he would use his veto. He admitted that the bill was necessary but feared that it would be unpopular. Later people would realize that it was necessary, and he would call another session. Yantis replied that the legislature had passed the bill and would fight for it; responsibility for its defeat would rest with the governor. Martin, not wishing to face this opposition, withdrew the threat. The governor's indecision reappeared at the 1935 session. Although the Democrats boasted a still larger majority, there was again conflict with the left wing of the party and with Republicans.

This time, Yantis preferred to assert his leadership in committees and on the floor rather than from the rostrum. Accordingly, he was appointed chairman of the committee on revenue and taxation, and a member of three other important bodies—harbors and waterways, rules and order, and judiciary. The controversy centered round the tax bill. After it had finally passed both houses, the governor called Yantis to his office on the evening of the ninth day after adjournment<sup>26</sup> and announced he would veto it. Again he was responding to pressure from the vested interests. Yantis used the same arguments as in 1933. There was no veto. During both sessions the senate was quite amenable to the lower house, and the lieutenant-governor acquiesced in Yantis' proposals. However, it is doubtful whether Yantis had a two-thirds majority to repass his measures if the governor had attempted the veto. His leadership was compounded from force of character and the intrinsic merit of his proposals. Clearly, if the governor is deficient, a legislator may fill the need. Leadership is not a monopoly of the chief executive.

Nor is reorganization limited to the executive branch alone. There is evidence that a movement of legislative reform is gathering pace and is attempting to remedy some of the defects which have hampered the legislature in the past. It is manifesting itself particularly in three devices: the legislative council, the research bureau, and unicameralism. In some of these, or in all combined, may be found the means by which the legislature can take the reins. This developing trend may modify profoundly the legislative importance of the governor.

The legislative council serves the fundamental purpose of preparing a program in advance of the session. In essence it is an interim committee which studies any problem calling for legislation. It submits a report and, possibly, a tentative bill, when the legislature convenes. The creation of these agencies

<sup>26</sup> The governor of Washington is given ten days after the legislature's adjournment to act on the bills that have been passed (*State Constitution, Art. III, sec. 12*).



appears as one of the most fruitful contributions of recent years to American state governments. The fourth decade of the century has witnessed Wisconsin's pioneer effort of 1931;<sup>27</sup> the experiments of Kansas and Michigan in 1933; of Virginia in 1935;<sup>28</sup> Kentucky in 1936; and Illinois, Nebraska, and Connecticut in 1937. The councils are of two types, depending on whether the governor shares in the selection of members.

The Wisconsin council was proposed by Governor Philip La Follette in January, 1931.<sup>29</sup> The legislature favored the idea and instituted a body composed of five senators and five assemblymen, appointed by the presiding officers of each house, and ten others, appointed by the governor. Its powers were: (1) to advise the governor on any matter he referred to it; (2) to investigate any department; (3) to study any problem of government; (4) to examine schemes of consolidation; (5) to administer oaths, issue subpoenas, and compel production of documents; (6) to assign offices and control some aspects of purchasing. This council, as can be seen, was to be concerned with *more than drafting a legislative program*. It was also to advise the governor on the conduct of administration. La Follette strove wholeheartedly to make the experiment a success. Before summoning a special session of the legislature in November, 1931, he submitted to the council his proposals on relief and taxation. At other times he requested their advice on matters of policy. The council made a number of surveys with the co-operation of officials in the state government and the faculty of the state university. There was no rift between the legislative and the gubernatorial appointees. The governor had secured the services of prominent citizens; and the legislators, far from being resentful, felt their own prestige enhanced by being associated with them. After two years, however, the ex-

<sup>27</sup> The Wisconsin body was named an "executive" council, the others are called "legislative."

<sup>28</sup> It was established by executive order in 1935 and by statute in 1936.

<sup>29</sup> See Leonard D. White, *Trends in Public Administration* (New York: McGraw-Hill Book Co., 1933), pp. 229-30.

periment broke down. A governor of a different party came to office. The senate presented political opposition and would not appoint its members. Since then the council has fallen into disuse.

In Virginia a "legislative advisory council" was created by executive order in 1935, the necessary funds having been granted by the Laura Spelman Foundation. It was composed of seven members appointed by the governor, with the chief of the division of statutory research and bill-drafting acting as secretary.<sup>30</sup> It was disputed whether the council should hold investigations when requested by the governor, or when asked by the legislature, or on its own initiative. Governor Peery opposed the latter alternatives, as he did not want inquiries into administrative questions which might cause him embarrassment. On his request the council made various studies and submitted reports for the 1936 session. The legislature largely followed the recommendations. In July, 1936, the council became a statutory body and was empowered to conduct research either at the governor's or at the legislature's suggestion. The governor was to appoint all seven members, of whom at least five had to be chosen from the legislature. Actually, he appointed three from each house and one citizen from outside. As a result, both governor and legislature receive assistance in framing legislation. The chief executive now has accurate information on which to base proposals; and each house of the legislature contains a nucleus of three familiar with the problems and able to present the arguments. To date, the council has increased the governor's legislative power. He has indorsed all its reports, and their recommendations thus become his. The council has, in effect, accorded official recognition to the governor's leadership, which formerly was exerted "behind scenes" in private conferences. Some judicious observers envisage the danger that this handful of six legislators, appointed by the governor and presumably serving his interests, may gain too much influence. But, since the legislature can at any time

<sup>30</sup> The writer is indebted to an interview with the chief of the division.

amend the method of appointment, the governor would be unwise to abuse his power. Thus, of the two councils in which the governor has an influential share, one commenced auspiciously but lost effectiveness when the governor and senate were at loggerheads; the other has worked smoothly, has provided the factual basis for legislation, and has enhanced the governor's power.

What has been the experience of the other type of council, in the selection of whose members the governor has no voice? The Michigan council was created in 1933 to fill a desperate need.<sup>37</sup> At the elections of November, 1932, the Democrats overturned a Republican ascendancy of some eighty years. The 1931 legislature had ninety-eight Republicans in its house of one hundred, and thirty-one in its senate of thirty-two. In 1933 the Democrats numbered fifty-six in the house and seventeen in the senate; they also held most of the executive offices. Of the fifty-six house members, all but two were serving their first term, and thirteen of the seventeen Democratic senators were equally new. Such was the majority party which had to legislate the state out of the depression. Professor Dorr declares that the legislators were not only unfamiliar with the legislative process but also unprepared to initiate a comprehensive program. The governor's leadership was just as inadequate, and his proposals were incomplete. The speaker took the initiative of introducing a bill to create a legislative council, in order that future sessions might have a program duly prepared in advance. The council was to have nine members, the presiding officers of the two houses who served *ex officio*, and three senators and four representatives whom they would select. Some of the legislators, who were not chosen to sit on the council, felt suspicious of this small body. Mr. Dorr, writing in 1934, anticipated that this resentment would disappear.

<sup>37</sup> See Harold M. Dorr, "A Legislative Council for Michigan," *American Political Science Review*, XXVIII (April, 1934), 270-75; and Hubert R. Gallagher, "Legislative Councils," *National Municipal Review*, XXIV (March, 1935), 147-51.

Next year saw the debacle. But the opposition came from the governor, not from within the legislature.<sup>32</sup> The tide had turned to the favor of the Republicans who had regained the executive offices and a legislative majority. Only three of the nine council members were re-elected in November, 1934. The council incurred the governor's displeasure by preparing a program for relief and for school aid. He attacked a "lame-duck" council as superfluous, ignored it in drawing up his own program, and declared he would have it abolished. The council retorted by criticisms of the governor, and their relationship became embittered to the extent that the experiment could not continue. It is interesting that this "purely legislative" council failed for the same reason as the "mixed" council of Wisconsin—conflict with the chief executive.

The sister-body, born in the same year in Kansas, has enjoyed a happier history. It was fortunate to survive an early attack on its life and has been gaining strength ever since.<sup>33</sup> The Kansas council is composed of ten senators and fifteen representatives appointed by the presiding officers of their respective houses. It is directed to meet at least once a quarter, and its duties are: (1) "to collect information concerning the government and general welfare of the state"; (2) "to prepare a legislative program in the form of bills or otherwise"; and (3) "to investigate and study the possibilities for consolidations in the state government."<sup>34</sup> The council held its first meeting in May, 1933, followed by a second in August. Governor Alfred M. Landon planned calling a special session to meet the unemployment and relief problems, and the council had to consider a program for co-operating with the national government. "In all, twenty-four proposed bills were introduced as Council bills in the special session of 1933. More than

<sup>32</sup> See Gallagher, *op. cit.*

<sup>33</sup> See particularly Frederic H. Guild, "The Development of the Legislative Council Idea," *Annals, CXCV* (January, 1938), 144 ff. The writer is grateful to Dr. Guild for a valuable interview.

<sup>34</sup> *Laws of 1933*, chap. 207, secs. 2-3. The statute lists more duties than those mentioned in the text.

fifty per cent of these bills passed the legislature either in their original or amended form."<sup>35</sup> Another special session was convened in March, 1934; and the council met again in the following month to deal with several important topics, including school finance. In July, 1934, the council's work was greatly facilitated by the formation of a research department for which the Spelman Fund gave a grant of \$15,000. Dr. Frederic H. Guild, chairman of the political science department at the University of Kansas, was appointed director of research. A number of reports were now prepared for the November meeting of the council, among them a detailed application of the proposed bill for school finance equalization.

It was at the regular session of 1935 that the council and its research department first came under fire. From the outset certain legislators had opposed instituting a body which they feared might usurp their functions. During the first two years many council members were unable to understand their duties or the allied function of the research department. A large number were farmers, unaccustomed to academic research and suspicious of professors. Their obsession was that a research department, in ferreting out the facts relevant to a proposed measure, was either supporting or opposing it. They were unfamiliar with the idea of an impartial agency, willing to establish the facts without bias. Even when presented with a factual report, they were unable to utilize the material. Some did not read it at all; others read and did not understand. Dr. Guild, who was always present at council meetings after the research department was instituted, had to educate the members in the use of the reports. He would ask the chairman's permission to make suggestions, or would be called on for information. At the 1935 session the legislators who were not council members did not accept the program with the same readiness as during the hysteria of 1933. Indeed, many measures were opposed for the very reason that they had been sponsored by the council.

<sup>35</sup> *Report of the Kansas Legislative Council, December 8, 1934* (Topeka: W. C. Austin, 1934), p. 12.

There was even talk of abolishing both council and research bureau, though there was less hostility to the latter. However, the situation was eased when legislators began to appreciate the true functions of both agencies. Council measures were offered as a basis of discussion, and nothing more. They contained no "must." Any authority they possessed was due to their inherent quality and to the findings of the report which accompanied them. By these arguments much of the opposition was conciliated. For instance, Senator X had objected to the instituting of both council and research department. Nevertheless, he was appointed on the council to represent his area. When the school finance equalization bill was being discussed, he made rhetorical statements about the probable cost. The bill proposed to give state aid to local schools by means of state taxes, and some districts, in effect, would be helping to maintain schools in other districts. The research department had investigated costs in each county and had concluded that the bill would involve an additional expense of \$6,500,000. Senator X, whose district was not one of those that stood to gain financially, declared that the cost would be at least \$10,000,000. Guild intervened, pointing out that the figure in the report was based on actuarial calculations, and any other accountants would arrive at the same amount. Senator X opposed the bill in the legislature, using, of course, the facts contained in the report as arguments against the bill. Gradually, however, he realized the purpose of a research department, and that he himself had profited from its work. At last he veered from his opposition to the council and the research department and became an ardent supporter.

As a result of Guild's tactful handling, both agencies have been fully accepted. His department is continually receiving requests for information from legislators of both parties. During sessions, indeed, they are swamped with inquiries. The department works at high speed; information is supplied with rapidity and in convenient form. On the other hand, when the council asked him to make a survey in a far too limited period,

he frankly told them that he could not do the work adequately in the allotted time. He has been active, too, in publicizing the council and the research department in order to spread knowledge of their work. When state associations meet in Topeka, Guild frequently addresses them; he sends copies of their reports to legislators and to interested citizens, and creates a body of opinion favorable to the new agencies.

A feature of the Kansas experiment is that the council, though bipartisan in composition,<sup>36</sup> has been nonpartisan in operation. Members have not voted along strict party lines, and there has been a genuine attempt at impartial deliberation. Once, however, in 1936, a party dispute threatened to break out. Governor Landon had delayed calling a special session for enacting a social security act to conform with the federal act. As he was then a leading candidate for the Republican presidential nomination, he did not wish to embark on a controversial issue prior to the convention. At a council meeting early in 1936 a Democrat attacked the governor for this delay, incurring a heated reply from a Republican. But another Democrat rose to smooth it over. The council was the Kansan council; it dealt with state issues; it was not to be embroiled in national party conflicts. The members responded to this sentiment.

Thanks to the research department and the excellent reports which it has published, the council has now formed the valuable habit of making proposals based on accurate study of the facts. Moreover—and this is the great advance—the attention to facts has pervaded the legislature. The reports are published; they are there for the members to read, and those who use them have an advantage. The reports are accepted as fair and impartial and in the debates are constantly quoted as authoritative. Dr. Guild himself has written:

The legislator who knows that research has been completed on a certain subject is most reluctant to enter legislative debate on that topic without being informed. In the 1935 session, when incorrect statements

<sup>36</sup> The parties are represented proportionately to their numbers in the legislature.

were immediately challenged by council members or by other legislators who had in their hands the research report giving the exact facts, the uninformed legislators found themselves in an embarrassing situation.<sup>37</sup>

What has been the council's relation with the governor? Both Governor Landon and his successor are said to "have been skeptical of the quarterly appearance at the state house of representatives of the legislature, with full power to open any subject for discussion."<sup>38</sup> However, there has been some co-operation and no open hostility. The governor sends messages to the council, recommending consideration of certain topics, and maintains contacts with members of the council's committees. In addition, he makes use of the research department, which serves him as well as the legislature. But a complication totally unforeseen was Governor Landon's candidacy for the office of president. The council was created to bolster up the legislature and make it the center of attraction. Instead, the national spotlight played on the governor, enhancing his prestige and prominence. For political reasons, too, during 1936 he was forced to "go slow" in dealing with the legislature. He feared to commit himself to anything that might damage his chances. Despite this, the council thrived and has by now become "an integral part of legislative machinery."<sup>39</sup>

The criticism has been advanced that twenty-five is too large a number for such a body. An unwieldy agency frustrates its chief aim—informal and effective discussion. The councils, as established in various states, have differed considerably in size. Virginia has seven members, Michigan nine, Nebraska fifteen, Illinois twenty—all less than Kansas. In favor of a larger council it is urged that all major interests and areas need to be represented. Indeed, the Kansas statute provides for inclusion of members "from each congressional district" and "from each of the more important committees of both houses."<sup>40</sup> Also, the legislature will listen more readily to a

<sup>37</sup> Guild, *op. cit.*, p. 149.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, p. 150.

<sup>40</sup> *Laws of 1933*, chap. 207, sec. 1.



larger body than to a small clique. On the other hand, critics hold that the larger the council, the greater the jealousy of the legislators who are not members. Each will feel himself suitable to be chosen among the ten or fifteen of his own house, but he may reconcile himself more easily to not being included among three or four appointees. Ten or twelve would seem to be an optimum. Certainly, the Nebraskan council, composed of fifteen out of its forty-three legislators, is a miniature legislature rather than a committee.

It must be remembered that the council is only an interim committee. It performs valuable work before the session; during the session it ceases to function. Hence, at the most, it performs only one of the two duties described above. Council members will admittedly be better equipped during the session because of the preparatory discussions they have attended. But they are under no responsibility to take the lead. One may grant that, in view of the tender sensitivities of the legislature, it is difficult for the council to win authority. It took time and patience to persuade the legislature that the council and the research department were its own agencies, existing to serve it before the session. It will take still more time, and far more patience, to acquire for the council steering powers during the session. The American legislator is proud of his prerogative, and rightly so. What is needed is to convince him that his work and that of every other member will be more valuable if the whole legislature organizes itself more effectively.

The research bureau is another device for legislative reform. Every legislature is under necessity of conducting research before passing laws. The problems with which modern governments deal cannot be settled merely by oratorical appeals to "eternal verities" and "the genius of our people." An unemployment insurance scheme or a pure food act require careful study of a mass of statistical and scientific data. The legislature must have the facts. Ever since the first decade of the century there has been a steady growth in what Professor

Witte calls "technical services for state legislators."<sup>4</sup> Over forty states now have some such service. Very few of these are full-time research agencies on the Kansas model. The majority give help in bill-drafting, in revising statutes, and in legislative reference; they do not prepare comprehensive reports as a preliminary to legislation. The research function has gained increasing recognition in this decade thanks to the difficulties of the depression. Other states are following the successful example of Kansas; both the Illinois and Nebraska councils, instituted in 1937, will have their research staff. Elsewhere, even though no similar agency has been created by statute, state governments are deriving increasing help from the state universities. In California, for example, the Bureau of Public Administration at Berkeley has tentatively begun to assist the legislature. After the elections in November, 1934, Professor May circularized all legislators and offered them the facilities of the bureau. He sent them memorandums on twenty of the leading legislative issues that were coming up at the next session, giving the experiences of other states and arguments pro and con. The response was fairly favorable. The "old guard politicians" ignored his overtures; but Upton Sinclair's "Epics," mostly newcomers and inexperienced, made great use of the bureau's services. During the session the bureau was gradually accepted as an impartial fact-finding agency, and its memorandums were quoted in debate. The same happened as in Kansas—those who knew the facts and had studied the arguments were at an advantage.

Undoubtedly, if the legislature supplies itself with a research department, both its debates and the contents of its laws should profit. This cannot fail to put the governor on his mettle. If the other branch is relying on research, he must do the same. There is no sound reason why the governor should oppose the creation of such agencies. When Charles McCarthy was operating a legislative reference bureau for Wisconsin,

<sup>4</sup> See Edwin E. Witte, "Technical Services for State Legislators," *Annals CXCV* (January, 1938), 137 ff.

Governor Philipp out of contempt for what he called a "bill factory," threatened in his campaign "to kick Dr. McCarthy out of the capitol."<sup>42</sup> Such a foolish attitude merely shows pique. If the legislature is trying to improve its share in legislative work, the governor must meet the challenge.

A still later development is the unicameral legislature which was adopted by the people of Nebraska in November, 1934, and held its first session in 1937. Its advocates point to it as a body fully capable of supplying the needed leadership. The Nebraska legislature has forty-three members, and, significantly, the elections are nonpartisan. It is, of course, premature to draw conclusions from the experience of one year.<sup>43</sup> But the 1937 session showed that this body intends at least to provide itself with all the mechanism of an effective organization. It created a constitutional reviewer of bills, a legislative council, and a research department. Further, it enacted that at the request of twenty-nine members it could be called into special session *without being dependent on the governor*. Unicameralism may enable the legislature to give leadership just because the number of legislators is so much smaller than under the bicameral system. Being more compact, the legislature possesses greater unity. It is free from the deadlocks and conflicts that often mar the relations of upper and lower houses. Its sessions are likely to be longer because it has to give a bill more careful consideration. One house will frequently shirk its responsibility if it can leave the task of revision to the other. By having longer sessions the unicameral legislature should increase its knowledge of the state government, and membership in it may become more of a full-time occupation than is possible in the usual brief sessions of the bicameral body.

Can other states successfully adopt this system? Nebraska was an ideal setting in which to try the experiment because it is relatively homogeneous. Agriculture is its mainstay. It has

<sup>42</sup> *Ibid.*, p. 138.

<sup>43</sup> See John P. Senning, "Nebraska's First Unicameral Legislative Session," *Annals, CXCV* (January, 1938), 159 ff.

only one large city, Omaha, and the manufactures located there are so closely associated with agricultural products that there is little conflict of interest. Certainly there is no such split as exists in New York or Illinois. One may seriously question whether unicameralism would be satisfactory in any of the states which have deeply rooted racial or economic distinctions. In such states a one-house legislature either will have to concede a permanent superiority in representation to one side or will have to maintain an uneasy balance between the two. Whichever method of apportionment be adopted, one group is likely to feel aggrieved. At least, if there are two houses, each can be controlled by a different group. Although deadlocks may ensue, each group has the satisfaction of knowing that it possesses some power in the government. Diversity of interests must necessarily limit the spread of the unicameral idea.

This survey of the legislative process shows that, despite the many handicaps of the legislature, leadership is no monopoly of the governor. It may even be questioned whether the recent increase in the governor's legislative influence is a permanent gain. The movement for reconditioning the executive has stimulated attempts to rehabilitate the legislature. Temporarily, at least, executive reorganization combined with other factors has confirmed the governor's legislative leadership. But in the long run executive reorganization may decrease his influence by provoking a counter-reorganization of the legislature. Should this happen, the separation of powers will strive toward a new balance of power. One hundred and fifty years ago the legislatures were supreme, governors of little account. In the middle nineteenth century a weakened and discredited legislature balanced a weakened executive. Today the scales are dipping on the side of the governor. If the legislatures are reconstructed, the future may witness a new balance of strength against strength.

## CHAPTER X

### CONCLUSION

THE governor's position described in the last three chapters is a long cry from that of his forerunner who had just enough power to sign the receipt for his salary.<sup>1</sup> Both in executive and in legislative spheres the four decades of the twentieth century have witnessed an unprecedented development of his leadership. Yet this increase, though undeniable, has been far from uniform. Of the four states which have here received special emphasis, the executive authority of the governor has developed furthest in New York and Virginia. Both adopted a short ballot and an executive budget which is carefully planned and administered. The power to appoint and remove was considerably extended; whilst New York has accorded its governor the same four-year term as in the southern commonwealth. The governor of these states can be said, with but slight qualifications, to be master of the executive branch. Illinois comes next in order. Its governor has an executive budget, a four-year term, and broad power of appointment and removal. He suffers still, however, from the retention of the long ballot; and in party or factional conflicts he may face opposition from the other elective officers. Massachusetts, too, has strengthened the governor's executive leadership, but to a far less degree than New York, Virginia, and Illinois. Although the governor of the Bay State was granted the executive budget, his term is only two years in duration; he is saddled with the long ballot and curbed by the council and the commission.

Leadership over the other branch has likewise increased, but by somewhat different means. The new executive powers have been formally conferred by amendments and statutes. Leader-

<sup>1</sup> See chap. II.

ship in the legislature has developed for the most part either *from the more vigorous exercise of existing legal powers or by* extralegal influences. Only to a small extent is it traceable to new legal provisions set down in black and white.<sup>2</sup> Of the four governors, the Virginian has the best opportunity for leadership in the legislature. His is a far more homogeneous state than either New York, Massachusetts, or Illinois. Hence there is little likelihood that governor and legislature will represent different sections and therefore be at conflict. The legislature, moreover, has regular sessions only once in a biennium. Its members, being less experienced in problems of government, are more ready to accept leadership from the governor. In the other three states regular sessions are held annually and may last as long as six months; the legislators are, therefore, better acquainted with the state government and less disposed to clutch at what the governor initiates.

An important factor which may promote rivalry between governor and legislature in these states is the sectional split, to which reference has so frequently been made. Economic, social, and even religious differences intensify the political warfare between the two branches. The result is that governors faced with hostile legislatures have perforce resorted to definite strategy for passing their bills. In New York especially, a favored technique is to appeal directly to the voters. But this method has limited use. It can be employed only on dramatic issues, for the people must have a cause round which to rally; and only at intervals, for they grow apathetic if exhorted too often. The legislative successes of Al Smith, Franklin Roosevelt, and Herbert Lehman are more striking than anything which lesser men could have accomplished against similar odds. But they are not as numerous as those of lesser men in states of greater homogeneity. In Massachusetts the recent trio of Democratic governors has experienced legislative difficulties

<sup>2</sup> Exceptions are the executive budget provisions, which add to the governor's influence vis-à-vis the legislature; the Massachusetts amendment, giving the governor the right to suggest alterations of bills without vetoing them; etc.

parallel to those of their fellow-Democrats in New York. But Ely, Curley, and Hurley do not compare in caliber with Smith, Roosevelt, and Lehman;<sup>3</sup> and their technique has been the appeal to patronage rather than to the people. In their efforts to secure the votes of legislators they have shown less regard for the civil service system than was the case in New York. The results are that these two dynasties of Democratic governors have achieved comparatively equal legislative success in the two states by their different methods. But in New York they have in addition raised the quality of administration; whereas in Massachusetts they have lowered it. This administrative difference is partially accounted for by the variation in legislative techniques.

In Illinois, also, there have been conflicts between governor and legislature, caused by the mutual suspicion of Chicago and downstate, which is fundamental to understanding Illinois politics. The various machines which have dominated Chicago in the last twenty years have been of consistently low level,<sup>4</sup> and their attempts to control the government at Springfield have been resisted by the inhabitants downstate who fear control by the corrupt politicians of the city. It is interesting that this constant factor has been an element in factional cleavages at the periods both of Republican and of Democratic ascendancy. In the former case, the Republican governor, Len Small, was allied with a Republican faction of Chicago and encountered resistance in the legislature from rival Republican factions and from Democrats. In the latter, Henry Horner, the Democratic governor, at feud with the Democratic mayor of Chicago, was opposed by the legislators of the city-hall faction. Again, as in Massachusetts, the desire to build a machine by patronage has had adverse effects upon the administration.

Thus, combining the powers of the chief executive in both

<sup>3</sup> Curley is nearest to them in ability, but far more unscrupulous.

<sup>4</sup> See Charles E. Merriam, *Chicago: An Intimate View of Urban Politics* (New York: Macmillan Co., 1929), and Harold F. Gosnell, *Machine Politics: Chicago Model* (Chicago: University of Chicago Press, 1937).

spheres, the governor of Virginia appears the most favored. There is less opposition to him in either branch than to any of the other governors. Second in order of leadership stands the governor of New York, with a firm grip on the executive, but a somewhat precarious hold over the legislature.<sup>5</sup> Third is the governor of Illinois, who may meet party or factional opposition from the elective officers and members of the legislature. Last and weakest, the governor of Massachusetts may find commission, council, and legislature impeding his way.

If it is difficult to estimate how much leadership different governors exercise, it is still harder to judge how well they exercise it. Has this leadership produced good or bad results? If good, further increase would presumably be unobjectionable; if bad, it may be necessary to call a halt. Taking the executive branch first, let us review the merits and disadvantages of the new powers. It will be remembered that the three outstanding defects of the state governments prior to reorganization were irresponsibility, duplication, and waste.<sup>6</sup> Reorganization proposed to substitute responsibility, efficiency, and economy.<sup>7</sup> To what extent did it succeed?

That responsibility can be more easily located in the reorganized executive branch is generally agreed. Some, in fact, assert that this has been the principal benefit attributable to the reforms. While he was governor of New York, Franklin Roosevelt wrote:

The chief result of administrative reorganization has been . . . centralization of executive and administrative responsibility. . . . The theory of this centralization has been borne out in practice, not only in the formal cabinet meetings of the governor and the various administrative heads, but in almost daily reports and conferences between the governor and the various chiefs of departments.<sup>8</sup>

<sup>5</sup> Especially if he is a Democrat; yet, even Republican governors have had opposition from their legislatures (e.g., Hughes and Whitman).

<sup>6</sup> See chap. iii.

<sup>7</sup> See chap. v.

<sup>8</sup> Franklin D. Roosevelt, "Results in New York State Vindicate Administrative Reorganization," *National Municipal Review*, XIX (April, 1930), 223-24.



Undoubtedly, the governor is at last becoming an officer worthy of the name. The executive budget, perhaps more than any other single factor, has strengthened his executive authority. It gives him control over the operations of all governmental agencies, it enables him to present a coherent program to the legislature, and it throws definitely on him the responsibility for proposing expansion or contraction of services. The short ballot, in New York and Virginia, has contributed to the same end. It adds to the governor's appointing power at the same time that it decreases the likelihood of opposition. The merging of small agencies, and the preference for single heads over boards, again make it easier for him to enforce his wishes. In short, the new governmental hierarchy concentrates power in the governor, and thereby funnels the responsibility. Moreover, the same principle is continued down the line. Not only can the people more fairly hold the governor responsible, but he in turn knows where to give orders in his administration and where to allot praise or blame. Because more functions have been grouped into larger units of organization, the department head can better fulfil his responsibilities. He has more power in his own hands, and the number of equal-ranking officers on whose co-operation he must depend is smaller. But, although the lines of responsibility are delineated more clearly than before, no governor has full and absolute control over everything that goes on within the executive branch. Every state still has some elective officers other than the governor and some multi-membered boards with long terms. In Massachusetts, particularly, the governor's powers are quite seriously restricted, and executive responsibility is proportionately divided. Yet, while bearing this in mind, one can truly say that the governor's responsibility is everywhere insured to a far greater degree than heretofore. In attaining this objective, the reorganizers can claim a large measure of success.

Duplication is another defect that has been diminished. Jurisdictional conflicts are bound to occur when a major administrative function is parceled out among numerous petty agen-

cies. Each treads on the other's toes; and, if the governor has insufficient power to settle disputes, friction and deadlock must continue. Many agencies felt and acted as if they were independent of the governor. Unless their respective heads voluntarily accepted a compromise, the bickering went on. When such agencies are reduced to the status of divisions and consolidated into a single department, there is the advantage that conflicts can at once be terminated by the department head. So it is with interdepartmental disputes in the reorganized governments. Since the governor's executive authority is more clearly recognized, separate department heads will accept the decision of their chief. To a large extent, the old feeling of independence and competition has given way to a new spirit of co-operation. This is principally because department heads now know that there is someone over them who can usually, if he wishes, enforce his commands. In many states department heads told the writer that in cases of disagreement they now appeal to the governor's judgment. Often the important thing in administrative matters is not *which* decision should be taken, but that *some* decision should be taken. Nowadays, the governor is there to render the decision.

The governor's role in co-ordinating administrative work is seen in the following examples. In the state of Washington there are functions relating to highways which require the co-operation of three agencies. The highways department sees to construction and maintenance; the division of transportation in the department of public service regulates the rates of common carriers and lays down conditions under which they can use the highways; and the state patrol is supposed to enforce the highway laws. At one period, when the patrol was carrying on its work inadequately, the highways department and the division of transportation organized their own corps of inspectors. Here was an unnecessary duplication of work which, prior to reorganization, might have remained without remedy. In this case, however, the governor called a meeting of the department heads concerned, ironed out the difference, and stimulated the patrol. Virginia, too, had an administrative prob-

lem whose solution was facilitated by reorganization. The department of public welfare wished to move a group of families from Shenandoah Park and settle them elsewhere, a task requiring the co-operation of the health and education departments. The commissioner of public welfare told the governor that the work involved other departments beside his own, and, accordingly, the governor appointed an interdepartmental committee which could arrange all matters of common concern. Other examples might be added by the score. But one can safely assert the general point that reorganization has encouraged co-operation between different administrative agencies under the governor's leadership.

Again, qualifications are advisable. No reorganized government has distributed its functions so perfectly as to avoid any duplication. Nor must it be forgotten that two departments may serve the interests of different groups which oppose each other.<sup>9</sup> For various political reasons some agencies which might have been consolidated remain independent. Certain departments, too, are less under gubernatorial control than the rest—as, for example, the education department in New York. Many pressure groups preferred that “their” agency remain in isolation rather than enter the new collective system. But, allowing for these exceptions, it is still correct to say that reorganization made definite progress in knitting administrative activities together. The governor can and does act as chief co-ordinator far more than was possible before.

Waste was another defect of the executive branch prior to reorganization. Economy was the suggested remedy. Whether that has actually been achieved is, in the writer's view, impossible to determine. Many have claimed that reorganization saved millions of dollars. But several of these assertions are suspect because they issue from the very governors who are taking the credit.<sup>10</sup> Moreover, mere reduction of expenditures is not in itself commendable. The pertinent question is:

<sup>9</sup> Cf. the industrial commission and the labor department in Virginia.

<sup>10</sup> See Leonard D. White, *Introduction to the Study of Public Administration* (New York: Macmillan Co., 1926), pp. 200 ff.

"Which items have been decreased?" Even if the proportion of administrative expenses to total expenses has been lowered, one may still question whether this is desirable. In certain activities a higher proportion of administrative costs may actually entail a smaller total of expenditures. For example, an appropriation for relief includes both the money and the services given to the relief client and the salaries of the administrative staff. The larger the staff, the more adequately can they investigate the client's situation and discover which claims are unjustified. Otherwise, relief may be issued to those who are not really in need.

Furthermore, the four states under consideration have greatly increased their appropriations since reorganization. If economy in the sense of eliminating waste was achieved, economy in the sense of reducing total expenditures was a failure. Circumstances of the last twenty years, and particularly of the last seven, have forced governments to provide many new services. Franklin Roosevelt has wisely commented:

It must be admitted that the economies claimed for consolidation of departments and the executive budget must be measured otherwise than by considering budget totals. The ultimate or true economies can, I believe, be proven. It is unfortunate that extreme enthusiasts for government reorganization promised actual reduction in the budget totals. Such reductions are not possible in a great state like New York with constantly increasing population and with growing demands for public improvement.<sup>11</sup>

There is, however, another feature for which a definite claim of progress can be made. The administrative work of the state governments is better planned than before, and the credit rests with the governor's new-found executive leadership. The executive branch is more comprehensible, information is more easily obtained, and long-range planning has become a reality. Because the structure of government has been simplified, the chief executive has less difficulty in taking an all-embracing view. He can see the administrative activities as a whole, ob-

<sup>11</sup> *Op. cit.*, pp. 223-24. This was written in 1930 and refers only to the state of New York.

serve their relation to one another, and judge their different needs by a fairer standard of comparison. The staff and control agencies—rudimentary as some of these still are—assist him in his tasks of over-all supervision. It is, above all, in formulating and administering the budget that he balances the requests of separate departments and evaluates them in the light of the general interest. The executive budget clearly calls for a plan. It forces the governor to consider long-term policies and to think in terms of the whole. Al Smith said that anyone who would learn about the government should study the appropriation bill.<sup>12</sup> One might add that anyone who would learn about the governor's leadership of the executive branch should look at his budget.

The advantages are, however, offset by certain defects. One group of criticisms attacks reorganization not for having wrong principles but for the incomplete application of good principles. It is easy to point out that no state has adopted in its entirety all the component parts of the reorganization program. Largely because of political obstacles,<sup>13</sup> the administrative structure was not completely remodeled to the new design. Some of the old walls were left standing, and the new edifice had to be joined to them. The survival of the long ballot, the retention of certain boards, the continued independence of many scattered agencies—all these were unavoidable concessions to political necessity. It is because of them that the chart of the reorganized executive cannot exhibit the nice precision of an engineer's blueprint. Undoubtedly, there is still room for further reforms. Yet, considering the opposition in certain states, what the reorganizers achieved is much more remarkable than what they left undone.

A similar criticism is that reorganization resulted merely in a "shuffling" of bureaus on paper. Though agencies were said to be consolidated, there was little genuine integration at the administrative level. This complaint is a serious one. In many state departments, agencies were bundled together with the

<sup>12</sup> See chap. vi.

<sup>13</sup> See chap. vi.

title of a "department," and in practice operated almost as independently as before. This was true to a large extent of Massachusetts and New York. In the latter state Al Smith performed wonders in achieving the final passage of reorganization. But, when it came to the actual administrative application of the law, he began to lose grip. He was cultivating his chances for the presidential nomination in 1928, and his time was less occupied with the affairs of the state government. Nor did Franklin Roosevelt properly tighten the administrative framework. His talents were par excellence those of the political leader, but he lacked the administrative flair. The reorganizers, who were victorious in the campaign and legislative stages, did not always have the time or the taste for the last and final stage. The political leadership which swayed voters and legislature was often unsuited to the patient execution of administrative details.

In addition to the criticism that the reorganizers did not properly carry out their principles, others complain that the principles themselves were at fault. The governor's executive leadership, they assert, turned out amiss in practice, because its theoretical foundations were unsound. It is argued, for instance, that the movement to abolish boards and commissions was ill-conceived. The best work often comes from private individuals who feel an urge to do it, and many of the boards were characterized by this spirit of voluntary service. Reorganization has diminished the opportunities for a citizen to take an active part in government affairs.<sup>14</sup> But is it correct to assume that voluntary work by private individuals is the best, and that it should therefore be increased? A fundamental trait of state activities today is their intricacy. Modern government requires administration by the trained expert, not by the well-meaning layman. However, there is still a place in government for the layman, and it is important that he should fill it. His service is best given in an advisory capacity. The administrator

<sup>14</sup> Cf. F. W. Coker, "Dogmas of Administrative Reform," *American Political Science Review*, XVI, No. 3 (August, 1922), 399 ff.

must know the feelings of those whom his work affects. If he is wise, he will derive profit from a citizen board attached to his department. Here the private individual can render his contribution, the attitude of the interested public. As a matter of fact, the reorganized governments in Illinois, Massachusetts, New York, and Virginia contain many such boards which enable the voluntary enthusiasm of the lay person to be wedded to the scientific skill of the official. Reorganization has not prevented citizens from participating in government. On the contrary, it enables them to participate where they can be most useful.

Others assert that the new control agencies, particularly the budget bureaus, are too strict. The lack of fiscal planning was a notorious abuse of the pre-reorganization governments, and it was a natural reaction for the reorganizers to institute their financial control in excess. A host of objections, to be sure, emanate from department heads who resent any supervision, however moderate. But the criticism does contain some truth. Certain governors and budget directors have adopted an attitude that calls forth legitimate complaints. Byrd and Pollard in Virginia, and Hartley in Washington, may justifiably be criticized for the stringent use of their new leadership. Indeed one might generalize the point and say that modern democratic states are too prone to place their finance officers in a pre-eminent position. The view that such officers should be in control of all departments accords well with the *laissez faire* theory of government. The businessman's philosophy would reduce to a minimum all functions of government other than those concerned with protecting property and maintaining "law and order." Naturally, it favors an agency whose prime purpose is to supervise the spending agencies. But a view of the state which regards it primarily as an institution for rendering service cannot acquiesce in the supremacy of a budget director. The chief executive is not first and foremost the "business manager of the government corporation." He is rather the chief purveyor of services to his fellow-citizens. The status of

the Treasury among British governmental departments is a survival of mid-Victorian *laissez faire*. Certain advocates of reorganization and certain governors of the reorganized states have not advanced beyond this conception. Let there be no misunderstanding. The foregoing argument is not directed against financial planning as such. The writer fully recognizes that this is necessary, whatever the dominating philosophy of the government. The reorganizers had to institute control agencies—indeed, in certain cases they could profitably create still more. The only question concerns the particular niche which finance officers should occupy, and the manner in which they should perform their duties. They are there to find ways and means, not only to reduce totals. They should give service to the operating agencies while the latter give service to the public. If the governor and the budget director overemphasize their powers of control, they may sap the energy of the other agencies. What matters most is the animating spirit.

The very fact that power is concentrated under the governor's leadership is another feature for which critics blame the reorganization. It is rash, they say, to stake so much on the ability of one man. If power is diffused, there is a chance that inferior work by some agencies will be counterbalanced by the superior performance of others. If it is gathered into the hands of a single individual, the whole administration will take tone and color from him. Of course, there are some qualifications. A few administrative activities proceed undisturbed no matter who is the man at the top. Lack of interest or lack of time prevent him from directly supervising each and every agency. But, on the whole, the argument is sound, and its implications are serious.

The writer has received the definite impression that the executive branches of the state governments experience too many ups and downs. The quality of the work done will vary from one governorship to another, and the degree of change is often so great as to disrupt continuity. It is still the personal factor which largely determines the character of the adminis-



tration. The machinery is too new to run of its own accord. Reorganization, of course, was necessary. But the very act of reorganizing disturbs settled practices, the good among the bad. Primarily, all this is due to the comparative lack of an effective civil service, without which it is hard to build up an administrative tradition developed over a period of years. Long-established departments build up a system of precedents binding upon a newcomer. In Virginia the force of governmental tradition makes itself felt; and in New York the successive Democratic administrations have imparted a sense of stability. But in Massachusetts, contrary to expectations, the executive branch seems to be suffering from the depredations of recent governors. Illinois and California are conspicuous examples of administrative reversals. The decline from Lowden to Small and from Young to Rolph illustrates how the whole branch changes with its chief. What is the value of reorganization, if much of the good which it accomplishes can be so soon undone?

This question raises a problem which is basic. Granting all the faults that were rife before reorganization, can one justify the increase of the governor's power, if he is not to be trusted? Reorganization of the executive is, after all, only a tool; it is like a gun which may fall into the hands of a gangster or G-man. Some may approve strengthening the governor's power, if he is likely to be an Al Smith. They may disapprove, if he will be of the opposite type. There were many, indeed, who employed the argument that if the authority of the office were increased far better men would be elected. The people, as they said, would be more cautious in their choice. This argument, applied to other reforms as well,<sup>45</sup> betrays a naïve faith in the voter's competence. The history of Illinois and California should convince anyone that reorganization does not necessarily produce better governors.

Professional groups, in particular, have been hostile to some of the reorganizations, just because they mistrusted the chief

<sup>45</sup> It has been used in Nebraska of the unicameral legislature—with what justification, time will show.

executive. The governor, they assert, is essentially a politician, and the motives that dominate him are political. Accordingly, they prefer that the governmental function in which they are concerned be placed beyond the governor's contaminating reach. They favor isolating separate activities into different cells where each can preserve its purity. It is not only the older professions—doctors, dentists, etc.—which exhibit this reaction against the governor's leadership. The younger profession of social work seeks to eliminate gubernatorial control by creating boards at the head of public welfare departments or relief-disbursing agencies. They do not want "politics" to "interfere." If it be conceded that there is some basis for these criticisms and fears, two questions at once arise: Is the governor primarily a political leader? Are there adequate means of controlling him? They can be answered only by looking into the governor's relation with the legislature. If he is a political leader, it is largely in legislation that he reveals it; and, if he is to be controlled, this is a task primarily for the legislature. Hence, the problems which lie at the root of the governor's executive leadership are intimately bound up with his legislative leadership. His relations with the two branches must be considered together; the one cannot be divorced from the other. The governor's leadership is not dual but single. It is a unified influence pervading both phases of the governmental process.

Is it desirable that the chief executive should also be chief legislator? Are the results salutary from the point of view of either branch? The administrative agencies undoubtedly profit from the legislative influence of the governor. Most of them want new laws enacted or old ones amended. Since theirs is the task of day-to-day administration, they can judge whether provisions are practicable. By explaining to the governor and winning his approval, they are more likely to secure favorable legislative action. Likewise, when a legislator introduces a measure which they feel to be unwise or unworkable, they can request the governor to defeat it in committee or by the veto. Successful administration depends so greatly on sensible legis-

lation that a co-operative relationship between the two branches can be invaluable to the administrator.

It can be of equal assistance to the legislator. His function is to crystallize the fluid compound of public opinion. To insistent demands and inarticulate wishes he gives form and meaning. But, in framing his remedies, he needs the advice of those who carry on the activities of the state. When the governor submits his recommendations, the legislature can respond as the people in miniature. By acting as chief executive and chief legislator alike, the governor fulfils the indispensable role of linking the two branches and their functions. Walter Bagehot in a famous passage described the British cabinet as "a *hyphen* which joins, a *buckle* which fastens, the legislative part of the state to the executive part of the state."<sup>16</sup> In American state governments, if any such hyphen or buckle exists, it is the governor.

There are disadvantages, on the other hand, to both branches in this straddling pose of the governor. From the administrative point of view, it must be conceded that a governor's legislative ambitions sometimes have disastrous results. The outstanding cause of the trouble lies in the patronage that is at times dispensed in return for a legislator's vote. While this *method may enhance the governor's legislative leadership*, it is known to vitiate the quality of his administration and depress morale. What is gained in one branch is lost in the other. The political activities of the chief executive may further hamper administration by his reluctance to enforce the laws. Influential personages in the professional and business worlds often give financial or other support to the party and may seek recompense in exemption from the visits of factory inspectors, from property assessment, and other governmental "rigors." The governor who is building his political fortunes needs the legislative and electoral votes which they can control. Natural-

<sup>16</sup> *The English Constitution*, first published in 1867 and reprinted in "World's Classics Series," No. CCCXXX (London: Humphrey Milford, 1928), p. 12. (Italics in original.)

ly, he orders his department heads to show them indulgence.

Similarly, the legislators can find demerits in the governor's leadership. Apart from those who may resent offers of patronage, many will feel that in accepting leadership from this source they are following one who is more their master than they are his. Since the chief executive of the forty-nine American constitutions is not directly responsible to the legislature, there is much opposition to increasing his power at the latter's expense. It is dangerous, so the argument runs, to centralize executive and legislative authority in a governor who continues independent of the other branch. In this vein Mr. A. C. Mills-paugh has expressed a vigorous criticism. His theme is that the strengthening of the chief executive is undemocratic:

Trapped by superficial analogies and misled by structural appearances, the administrative reorganizer momentarily forgot that democracy is a fundamental issue and a conditioning factor in all aspects of American government. . . . As a matter of fact, he was proposing an administrative pattern motivated subconsciously by the speed and profit manias, a pattern that was essentially dictatorial, and that largely disregarded American experience and the implications of popular government.

Unfortunately, when this plan of administrative organization was being most zealously promoted and was receiving partial endorsement in a number of states, the democratic ideal, for various reasons, had been temporarily obscured. Preoccupation with material prosperity tended to emphasize economic ends rather than political means.<sup>17</sup>

The writer cannot help feeling that Mr. Millspaugh overstates his case. To say that the pattern of reorganization was "essentially dictatorial" and to describe its advocates as "proponents of absolutism in administration"<sup>18</sup> are indefensible exaggerations. While it is perfectly true that the reorganizers did capitalize "the speed and profit manias" in their campaigns and propaganda, it is incorrect to say that they "disregarded American experience and the implications of popular govern-

<sup>17</sup>"Democracy and Administrative Organization," in *Essays in Political Science in Honor of W. W. Willoughby* (Baltimore: Johns Hopkins Press, 1937), pp. 65 ff.

<sup>18</sup>*Ibid.*, p. 68.

ment." Actually, the contrary is true. Their proposals were drawn directly from American experience, save for the executive budget, which was modeled on the English. They were giving the governor powers which made his position in the state governments a closer approximation to that of the president in the federal government. Nor had the "democratic ideal" been "temporarily obscured." What had happened was that one interpretation of the democratic ideal had produced results which were undemocratic. Power was being wielded in certain states by irresponsible bosses. Executive reorganization was one in a group of movements which aimed at upholding the democratic ideal—by a new interpretation.<sup>19</sup> But, although the case is overstated, Mr. Millspaugh raises an important issue. Is it true that the so-called "separation of powers" requires that the executive should not be made too strong? Does this system impose an inherent limit on the strengthening of the governor which would not apply under a cabinet system?

There is no reason why the executive leadership of the governor should be incompatible with the separation of powers. Someone must be placed at the top to co-ordinate the multifarious activities of administration, and the governor is the logical choice. All that happens within the executive branch is a proper subject for his supervision. But it is only fitting—indeed, democratic principles demand—that there be reciprocal means of control. The problem, as it was stated in the opening chapter, is to give officials the power to serve and prevent them from abusing it. Critics of reorganization are justified in complaining that the means of control are inadequate. As Professor Harvey Walker declares: "The theorists say that concentration of authority is inevitably followed by a corresponding responsibility. But how can this responsibility be enforced?"<sup>20</sup> An objective of reorganization was to remove checks and balances within the executive branch, a necessary preliminary

<sup>19</sup> See chap. v.

<sup>20</sup> "Theory and Practice in State Reorganization," *National Municipal Review*, XIX (1930), 253.

if this arm of the state was to render service. But the reorganizers failed to grasp that, if they abolished internal checks, they must needs strengthen external checks as a compensation.

What checks are possible within the governmental framework? In the first place, there is the audit, included by certain states, such as Virginia, in their reorganization. But others did not provide for it adequately. In New York, for example, the elected comptroller conducts a pre-audit rather than a post-audit; whilst, in the state of Washington, auditing is carried out by a division in the department of finance, budget, and business, and is, therefore, not strictly independent. The courts provide another check. But their control can be exercised only in specific cases brought before them on the initiative of contesting parties. Further, it applies principally to those executive duties which are mandatory. The host of discretionary activities involving deliberations on policy are often beyond a court's jurisdiction. The courts, therefore, cannot cover the whole range of administrative action. Their control is both limited and intermittent. The "big stick" can also be wielded by the electorate. Since the government exists to serve the people, it is to be supposed that they will prove proper guardians of their own interests at the polls. Unfortunately, experience shows that the voter is a slender reed to lean upon. Many an incompetent has been elected governor; and merely to refuse him a second term is a poor solace after two or four years of maladministration. Actually, some such governors do secure re-election. An Illinois lower court held Len Small, in chancery proceedings, liable for restitution of the interest on state funds which he had received while he was state treasurer.<sup>21</sup> Soon afterward the people granted him another four years as governor!<sup>22</sup>

If audit, courts, and voters are insufficient, the only remaining hope lies in the legislature. Can this body counterbalance

<sup>21</sup> The conviction occurred during his first term as governor.

<sup>22</sup> It is only fair to add that they did not re-elect him in 1928 or 1932.

the strengthened executive? Clearly, if the governor has added to his legislative leadership at the same time as his executive leadership has increased, any check from the legislature is unlikely. Far from being controlled, the governor will control the legislature. A governor wielding authority in both branches alike is an officer who can perpetrate great harm if he is so disposed. A governor of a state that has been reorganized is reported to have said: "Since I've been up here, I've realized what could happen if a crook were to run the government."<sup>23</sup>

But, although the governor's legislative leadership has increased, it is by no means so assured as to give him complete authority. True, many governors have acted as chief legislators. Many others, however, have come to deadlock with the co-ordinate branch, or even suffered defeat at its hands. The difficulty which Smith experienced in carrying through reorganization and the obstacles which confronted Franklin Roosevelt and Herbert Lehman are clear indications that even outstanding governors do not have everything their own way. The legislature may at times be a docile follower of an energetic governor. But the powers which it is accorded by the constitution always leave in the background a possibility for revolt; and, if the revolt comes, woe betide the governor. The legislature has an arsenal of weapons at its command. It can pass laws against his wish and override a veto by a two-thirds majority;<sup>24</sup> it can refuse appropriations, as the 1935 legislature of Georgia did with Governor Talmadge; lastly, it can impeach. Such reserve threats should give any governor pause.

The possession by the legislature of these powers leads one to query a contrast commonly drawn between American and British institutions. Under the parliamentary system the cabinet is responsible to the legislature. An adverse vote in the House of Commons will unseat a government. Some critics of reorganization assert that they would not object to strengthen-

<sup>23</sup> Statement of the governor to a legislator, and repeated by the latter to the writer.

<sup>24</sup> In some states a smaller majority is sufficient.

ing the governor if he were accountable to the legislature in this fashion. The American system, as they hold, does not give the legislature as much control over the executive as does the British. Much, however, can be said for the opposite view, that under the American system the legislature has a check on the executive just as great as under the British, if not actually greater. It is true that the House of Commons can overthrow the cabinet. But how often does it do this? Anyone who scans the modern changes of government in Britain will see that very few are due to a revolt in the Commons.<sup>25</sup> It takes an issue of tremendous magnitude to stir the back-benchers to rebellion against their leaders. Generally, the bonds of party discipline and the member's disinclination to fight another election are sufficient guaranties of the cabinet's security. Indeed, the trend seems to be that the cabinet is gaining supremacy over the Commons rather than is being dominated by it. It is now fairly well accepted that the king must grant a dissolution of Parliament at the prime minister's request. Hence, the cabinet itself has a weapon with which to curb recalcitrance. The power of the private members to turn out the cabinet is more than balanced by its power to make them contest their seats. A rebellious group within the majority party might favor joining the opposition, if they were sure that they could force the government to resign and would themselves immediately participate in a substitute government. But it is unlikely nowadays that the government would submit so accommodatingly. Instead, the prime minister who is threatened will probably ask for a dissolution and appeal to the country. Hence, the rebels, instead of at once becoming members in a new cabinet, must face an election in which they may be beaten. This prospect minimizes the chances that the cabinet will be defeated in the House.

In the federal and state governments of America the legislature has all the reserve artillery mentioned above. It cannot,

<sup>25</sup> See the excellent discussion of Howard L. McBain, *The Living Constitution* (New York: Macmillan Co., 1934), pp. 134 ff.



of course, turn the executive out of office, save by impeachment. But, in every other way, it can make the position of president or governor thoroughly uncomfortable. Furthermore, the American legislators who defeat the measures of a chief executive cannot be threatened with dissolution as in the case of their British analogues. They can strike hard, with less fear of reprisals.

The governor's leadership, as it exists today, is a strange mixture. There are many advantages in having the chief executive for chief legislator. But there is the signal disadvantage that he does not possess all the means for exercising leadership in a free and open manner. His influence in the legislative branch is derivative; he acquired it largely by manipulating powers originally conferred for other purposes. Essentially, the crux of the problem is whether a legislature can be led effectively by someone not inside it or answerable to it.

This question is presented acutely in the United States by the emergence of the chief executive as chief legislator. Interestingly enough, Britain, too, has had to face it. There was a time when the crown was chief legislator as well as chief executive, and the perplexing constitutional issue was somehow to make the executive responsible to Parliament. The cabinet system began to develop during the period when the first kings of the foreign House of Hanover perforce left legislative concerns to the parliamentary leaders. Walpole assumed some of the functions which had formerly been a part of the royal prerogative. George III, however, sought to restore the legislative power of the monarchy. Here was an attempt by an irresponsible executive to lead the legislature. In essentials it is similar to efforts of American chief executives to lead their legislative bodies. What methods did the king use? The answer is that he employed certain devices which are not unknown in the United States. They have been described by one of the greatest living authorities on English history:

George could see no reason why Parliamentary "influence" by which the country was governed, should not be exercised by himself as King,

instead of by certain great nobles, distributing the favours of the State in his name but contrary to his wishes. . . . He made corruption worse corrupted by systematising the purchase of members of the House of Commons with sinecure places and even with hard cash payments for their votes.<sup>26</sup>

Side by side with this modern judgment can be set the contemporary opinion of Alexander Hamilton. Writing in *The Federalist*, this statesman was anxious to refute the far-seeing predictions that a president might behave toward Congress as had George III toward Parliament. "The venality of the British House of Commons," he said, "has been long a topic of accusation against that body in the country to which they belong as well as in this; and it cannot be doubted that the charge is, to a considerable extent, well founded."<sup>27</sup>

When an executive officer seeks to lead a legislature to which he is not responsible, techniques of this kind are likely to be employed if he has no better means. This has occurred both in Britain and in America. Britain, to some extent, has rid herself of these practices ever since the executive and legislative leadership devolved on a committee of Parliament. But it is not the cabinet system as such which makes it needless for the British executive to employ these methods of leading the legislature. The cause can be traced to other factors. During the same period that the cabinet finally took over legislative influence from the crown, civil service was instituted, decreasing the patronage which a prime minister could distribute. With civil service Gladstone established a strict audit, whose effectiveness might prevent the prime minister from offering the cruder form of bribe. British legislators, moreover, stand far less in need of favors from the chief executive than their American counterparts. Because the member of Parliament is not as dependent on his constituency as the senator or representative, he does not have to beg the prime minister for tidbits from the "pork

<sup>26</sup> G. M. Trevelyan, *British History in the Nineteenth Century* (New York: Longmans, Green & Co., 1922), p. 36.

<sup>27</sup> Alexander Hamilton, *The Federalist*, No. LXXVI ("Everyman's Library" [New York: E. P. Dutton & Co., 1934]), p. 389.

barrel," with which to regale his locality. This is partly due to the fact that in Britain a would-be legislator can represent a district anywhere in the country. Since the American legislator is restricted in his choice by residence requirements, he must keep in the good graces of the chief executive and of "the people back home." The independence of the British legislator is further enhanced by the special procedure instituted for private bills. The semi-judicial hearing before a committee makes "logrolling" almost impossible. Hence, the locality cannot expect its member, as a matter of course, to secure an appropriation for it. If patronage and allied techniques are relatively<sup>28</sup> absent from the British legislative process, it is thanks to civil service, the audit, and the independence of the member of Parliament, rather than to the cabinet form of government. Had the cabinet system existed without those other safeguards, there is no reason why prime ministers should not use patronage extensively. The cabinet system, by itself, is no protection.

Keeping these considerations in mind, one can ask whether it is possible for American state governments to place the relation of chief executive and legislature on a better footing than at present. The writer is assuming (for the foregoing reasons) that a closer affiliation of the executive and legislative branches is as desirable as it is inevitable. Granting that assumption, can one suggest how to retain the benefits of a more perfect union while avoiding the disadvantages? There are some who advocate the outright adoption of the cabinet form in the United States. This might help to solve the problem—although the recent argument shows that this alone will not suffice. Even if the British system were reproduced in its entirety, it is doubtful whether America would thereby find its panacea. All systems of government which operate at all effec-

<sup>28</sup> The qualification is needed. Through his party leadership the prime minister can threaten recalcitrant back-benchers that they will not receive official party indorsement at the next election, unless they vote with the government. He can also promise a place in the "honors list" to the vacillating.

tively are a combination both of legal provisions and of unwritten conventions. There is a whole congeries of understandings, habits, and traditions which go into the working of a constitution. Legal provisions can be transferred to another country by a stroke of the pen, but the other half of the constitutional fabric is no article for export. The whole British system is an outcome of century-old battle and compromise. It was not forged by conscious planning and logical deduction. Rather, it was, as Mr. Ensor has remarked of one feature in it, "stumbled on by a sort of horse-sense."<sup>29</sup>

Even if such a change-over were ideally to be desired, American traditions make it politically impossible. For some time at least, lip service must be paid to the "separation" of powers, albeit in reality they are growing closer together day by day. Indeed, American institutions have developed in so fruitful a fashion over the last forty years that the experimentation deserves to be continued. At present, leadership in the executive branch of certain reorganized states is fairly well established. The foundations of an effective organization have been laid down; what is needed is to improve sections of the superstructure. The real flaw today lies not so much within the executive branch as in the relation of the executive to the legislature. This has not yet been happily settled. In particular, the unsolved problem is to determine the proper role of the chief executive in the legislative process. The legislature needs to be led. Either the governor's leadership should be more stabilized than it is at present, or it should be frankly renounced, or it should be shared. To a British observer, the most regrettable feature of the separation of powers is the possibility of deadlock between the two branches. What can be done to avoid it?

The various suggestions for solving the problem fall into two groups. There are some who favor separating the governor's political from his administrative functions. Thus Professor Harvey Walker proposed that a small unicameral legislature

<sup>29</sup> R. C. K. Ensor, *Courts and Judges* (London: Oxford University Press, 1933), p. 43.

should choose a chief administrator for an indefinite term, who would appoint all heads of departments. The governor would act as ceremonial head of the state, send messages to the legislature, call special sessions, and exercise a veto.<sup>30</sup> Essentially, this is the application to state governments of the city-manager plan. Another way out is indicated in the Model State Constitution, drafted by a committee of the National Municipal League. Under this scheme the governor is to retain his executive powers and have full authority over the administrative departments. He and the department heads are to sit in the legislature, introduce bills, share in debate, but have no vote. Any bill which the legislature does not pass can be submitted by the governor to a referendum, provided that at least one-third of all members voted favorably. The legislature, for its part, is to be unicameral. It can remove the governor by a majority of two-thirds. A similar majority can override a veto; but, if at least one-half approve a vetoed bill, they, too, can require a referendum.<sup>31</sup> It is interesting that certain of these proposals were introduced at the 1917 Massachusetts constitutional convention, although they were not adopted.<sup>32</sup>

The two sets of proposals differ radically in their treatment of the governor. Under the former, he would have a combination of legislative and ceremonial duties. His political "interference" with the administration is to be prevented by the expedient of cutting the painter. He will have nothing to do with the executive branch. The legislature will reassume its direct control over the administrative agencies which it enjoyed prior to reorganization; but, the officer whom it appoints will be partially independent of it. In the latter scheme the governor would preserve his new-born executive authority;

<sup>30</sup> Harvey Walker, *Public Administration in the United States* (New York: Farrar & Rinehart, 1937), pp. 79-80.

<sup>31</sup> Model State Constitution, prepared by the National Municipal League; printed in John M. Mathews, *American State Government* (New York: D. Appleton & Co., 1926), pp. 519 ff.

<sup>32</sup> Report of the Committee on the Executive, signed by Josiah Quincy, chairman, *Debates in the Massachusetts Constitutional Convention of 1917-8* (Boston: Wright & Potter Printing Co., 1918-20), III, 887 ff.

whilst the fact that circumstances have endowed him with a legislative role would be accorded constitutional recognition. His leadership of the legislature would now be exercised from within. But the legislature in turn would possess powers for controlling him. Deadlocks would be averted by referendums to the people or even by removal of the governor.

To decide between the alternatives is a matter of delicate judgment that precludes dogmatic finality. Either would entail another drastic change in the already eventful history of the governor. Two considerations, at any rate, should guide the choice. Whatever plan be proposed, there must be due attention to divergences of political traditions. It is not to be assumed that an identical pattern can fit all states. In recommending a particular form of administrative machinery, one must reflect on the type of men who are going to run it. If in certain states the average quality of legislators or governors is inferior, it might be wise to introduce more checks than are needed elsewhere. Another consideration is that too many political systems fail to make allowance for human limitations. The number of hours which a chief executive can efficiently work conditions the number of functions he should be required to perform—a simple truth, but frequently overlooked by architects of government.

The "state-manager" idea has certain features to commend it. Numerous cities have benefited from the manager plan, and perhaps it might be of equal success in the states. The principal merit claimed by its advocates is that it sharply distinguishes between political and administrative functions and intrusts them to different officers. However, those who desire to transfer the plan bodily from city to state should consider the difficulties. Differences in size might radically affect its operation. Although the very largest cities have greater populations than some states, none of those cities has yet instituted a manager,<sup>33</sup> and one cannot argue with any certainty that the plan would succeed in states like New York or Massachusetts. Also,

<sup>33</sup> Cleveland, the largest city which has hitherto adopted the plan, has abandoned it.

the area of the states creates a problem of distance which is lacking in a city. The city manager, especially in small or medium-sized communities, can keep in close touch with the administration and with the citizens. Would this be as easy for a state manager in, let us say, California?

Another query is whether the legislature would select a really first-class man. Would it appoint a man who might "steal the show"? Professor Walker suggests as a safeguard that the manager be given a salary of \$10,000 to \$50,000 or more. "The people," he affirms, "will not sit supinely by and watch a political chief administrator bungle his work if he is being paid a substantial salary."<sup>34</sup> Is not this the same "pathetic fallacy" that has been encountered before? Do the people always give stricter watch to officers whose position they have enhanced? In this plan it may also be hard to adjust the relation of the governor to the chief administrator. The governor will be elected as a political officer; he will formulate policies and lead the legislature. Presumably, he is interested to see how his measures are executed. Will there not be a possibility of encroachment on the manager? The new version of the "separation of powers" may create the same problem as the old. If in practice co-operation is desirable, circumstances will unify what the constitutions have divided.

The other scheme has the merit of clarifying the relation of governor and legislature. It accepts the governor's legislative influence as *fait accompli* and incorporates it into the constitutional system. Josiah Quincy frankly stated:

If the Governor is to be in fact a leader of political thought, an initiator of progressive measures, or even an authoritative party leader, it is certainly desirable to recognize these conditions and to provide more fully for the powers and responsibilities which should accompany such a development of the executive function.

This can best be accomplished by giving formal recognition to the extra-constitutional relations between the executive and legislative departments which now exist to so considerable an extent in fact.<sup>35</sup>

<sup>34</sup> *Public Administration in the United States*, pp. 80-81.

<sup>35</sup> *Debates, Massachusetts Convention, 1917-8*, III, 892.

The Model State Constitution is ingenious in its methods of avoiding deadlock, although the referendum device is not itself free from disadvantages. The inherent intricacy of most modern laws, the general lack of political education, and the biased reporting of the press lead one to doubt whether the voters can be satisfactory judges. Some might prefer a general election of the British type rather than a vote on particular measures. In some respects it is preferable to have an election whenever the need arises than to be restricted to artificial periods as in America. But the British system may be manipulated to give the government an advantage over the opposition. The prime minister can always request a dissolution; the leader of the opposition cannot. Hence, the "ins" can, and do, seize the opportunity for "snap" elections. The remedy, of course, is to allow either side to initiate the appeal to the country. On the whole, the referendum, coupled with the reasonable provision that the legislature can remove the governor by a two-thirds majority, should eliminate deadlock.

Perhaps the signal merit of these proposals is their recognition that governor and legislature must co-operate in the legislative process. An earlier chapter analyzed the respective ability of each branch to provide leadership. Probably the true solution is that it must emanate from both in unison. American constitutions and practical politics have thrown governor and legislators together as partners in the legislative function. It is more sensible for them to co-operate than for either to dominate. Each side has its own contribution. If this partnership can be effected, it will combine two meritorious features, one of the British, the other of the American, system. The British has the advantage that the responsibility for proposing laws rests clearly on a distinct group, the cabinet, which plans the work of the session. Hitherto this planning has been inadequately performed in America. But the American system is superior in allotting more importance to the ordinary legislator. The British back-bencher is tending to become a cipher. The cabinet monopolizes legislation of consequence, and scanty



time is given to "private member bills." Naturally, the cabinet indorses only those measures from which it expects political capital. Many social reforms remain unenacted because the cabinet will not bother to propose them, and the private member lacks the power. In the United States the ordinary legislator introduces his bills—often, indeed, too many—and stands greater chance of having them adopted. It is to be hoped that the governor will play the part of the cabinet in presenting a program. It is equally to be hoped that legislators generally will propose the measures which the governor does not deem politically worth while.

But the Model State Constitution needs to insert a modification of the manager plan in the executive branch. The governor is to remain a political officer; and, even though the legislature has control over him, that body, too, is political. The writer sees value in a chief administrator who can act as a "buffer." His concern will be with administrative detail. He will prevent spoils appointments, improper contracts, and graft. On policies he will take his cue from the governor. Preferably he should be appointed by the governor with the consent of the legislature for an indefinite term and be removable only with its consent. This officer would be indispensable to the governor in taking out of his hands many responsibilities which he has not the time to fulfil. The burden thrown on the chief executive in the larger states—even in those which have reorganized—is excessive. All the year round a governor of Massachusetts or New York has multifarious political matters that call for his attention, since it is he who conducts the public relations of the state government. In particular, when the legislature is sitting, he is fully engrossed and cannot supervise the administration. The larger the state, the more complicated are the problems that he must face, and the greater his need for help. In small states, where legislatures meet but seldom and life is less complex, a governor might still combine his varied functions. But in the large states the governor needs a chief administrator. The governor cannot directly supervise each and every ac-

tivity. At the most, he can see that all agencies co-operate without friction. Essentially, he is the conductor of the state orchestra; the chief administrator should be his first violin. Of course, the latter officer, by virtue of his secure tenure, can maintain a certain independence. He can check the governor as well as aid him—and the potential curb has its value.

If all governors were invariably first class, such a check might be unnecessary. Unfortunately, a realistic view will admit that some governors need restraint. As long as there is the possibility of administration or lawmaking by inferior men, the structure must be built accordingly. It is here, above all, that the principles of reorganization have failed to justify themselves. The major premise of the whole movement was: *strengthen the governor, put your trust in the governor*. It is not unfair to say that some have betrayed the trust. Where reorganization and legislative leadership have failed, it has been largely due to the governor's incompetence. Was it not a naïve faith which led Wilson to assert that reorganization was the key to the whole problem of restoring democratic government? Results have shown that tinkering with the machinery is not enough. One can at will reorganize a departmental structure; one cannot reorganize a tradition of politics. The renaissance of the governor was rarely accompanied by his reformation. The strongest hope lies in developing a tradition of continually electing good men. *The boast must be:*

Not Amurath an Amurath succeeds,  
But Harry Harry.

The ultimate solution lies beyond the scope of mere institutional reform. Provisions of law can ordain hierarchies and confer authority. But true leadership, which inspires the willing confidence of men, cannot be crystallized into constitutional grants of power. Each governor must win it anew.

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